

MONTANA LEGISLATIVE HISTORY

Chapter 339 19 97

Bill H 172 S _____ Original bill & history X c

H. Committee on BUSINESS & LABOR

Hearing Date(s) 1/16 X c

EXEC. ACTION 1/24 X c

_____ c

_____ c

Date Out _____ c

S. Committee on LABOR & EMPLOYMENT

Hearing Date(s) 2/11 X c

EXEC. ACTION 3/6 X c

_____ c

_____ c

Did this bill originate in an interim committee? ____ Yes X No

Committee _____

Report _____

LEGISLATIVE HISTORIES

The 1997 Montana Legislature dramatically changed the nature of legislative minutes. This altered format continues with the 1999 legislative minutes. The minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are fuller in content.

Exhibits, which include written statements, attendant information, roll call votes, roll call attendance, a list of those from the public who were present, and specific action taken on legislative bills, will be available only through the Historical Society Archives, 444-4774, and from a CD-ROM produced by the Legislative Services Division, 444-3064.

Just as in the 1997 legislative session, the 1999 House and Senate committee hearings were recorded. For information on accessing the tapes, or purchasing them, contact the Archives, 444-4774.

If you have concerns over the format of these legislative minutes, it is suggested that you contact your state legislators.

HB 169 INTRODUCED BY ZOOK, ET AL. *LC0063 DRAFTER: PETESCH*

REVISE AND CLARIFY THE LAWS GOVERNING APPROPRIATIONS AND THE ADMINISTRATION OF STATE GOVERNMENT FINANCES
BY REQUEST OF LEGISLATIVE FINANCE COMMITTEE

1/02	INTRODUCED		
1/03	FISCAL NOTE REQUESTED		
1/06	FIRST READING		
1/06	REFERRED TO APPROPRIATIONS		
1/13	FISCAL NOTE RECEIVED		
1/13	FISCAL NOTE PRINTED		
1/30	HEARING		
3/25	COMMITTEE REPORT—BILL PASSED AS AMENDED		
3/26	2ND READING PASSED	82	15
3/27	3RD READING PASSED	67	33
	TRANSMITTED TO SENATE		
3/28	FIRST READING		
3/28	REFERRED TO FINANCE & CLAIMS		
4/10	HEARING		
4/12	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
4/14	2ND READING CONCURRED AS AMENDED	33	17
4/14	SEGREGATED FROM COMMITTEE OF WHOLE REPORT	28	22
4/14	ON MOTION RULES SUSPENDED TO PERMIT 3RD READING ON 4/15	50	0
4/15	2ND READING CONCURRED AS AMENDED	50	0
4/15	3RD READING CONCURRED	50	0
	RETURNED TO HOUSE WITH AMENDMENTS		
4/19	2ND READING AMENDMENTS CONCURRED	88	9
4/19	3RD READING CONCURRED AS AMENDED	84	13
4/24	SIGNED BY SPEAKER		
4/24	SIGNED BY PRESIDENT		
4/25	TRANSMITTED TO GOVERNOR		
5/05	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 532		
	EFFECTIVE DATE: 05/05/97—SECTIONS 40(2) & 41		
	EFFECTIVE DATE: 07/01/97—SECTIONS 1-39 & 40(1)		

HB 170 INTRODUCED BY AHNER *LC0554 DRAFTER: HEFFELFINGER*

ESTABLISH A GUARANTEED ANNUAL BENEFIT ADJUSTMENT FOR CERTAIN BENEFIT RECIPIENTS IN THE STATEWIDE PUBLIC EMPLOYEE RETIREMENT SYSTEMS UNDER THE PUBLIC EMPLOYEES' RETIREMENT BOARD
BY REQUEST OF PUBLIC EMPLOYEES' RETIREMENT BOARD

1/02	INTRODUCED		
1/03	FISCAL NOTE REQUESTED		
1/06	FIRST READING		
1/06	REFERRED TO STATE ADMINISTRATION		
1/15	FISCAL NOTE RECEIVED		
1/16	FISCAL NOTE PRINTED		
1/22	FISCAL NOTE PRINTED		
2/04	HEARING		
2/19	TABLED IN COMMITTEE		
3/08	COMMITTEE REPORT—BILL PASSED AS AMENDED		
3/11	2ND READING PASSED	82	15
3/12	3RD READING PASSED	85	13
	TRANSMITTED TO SENATE		
3/13	FIRST READING		
3/13	REFERRED TO STATE ADMINISTRATION		

3/18	HEARING		
3/27	COMMITTEE REPORT—BILL CONCURRED		
4/04	2ND READING CONCURRED	50	0
4/05	3RD READING CONCURRED	49	1
	RETURNED TO HOUSE		
4/09	SIGNED BY SPEAKER		
4/11	SIGNED BY PRESIDENT		
4/14	TRANSMITTED TO GOVERNOR		
4/17	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 287		
	EFFECTIVE DATE: 07/01/97		

HB 171 INTRODUCED BY RANEY *LC0257 DRAFTER: PETESCH*

REVISE AND CLARIFY THE ALLOCATION OF RESOURCE INDEMNITY AND GROUND WATER ASSESSMENT TAXES
BY REQUEST OF LEGISLATIVE FINANCE COMMITTEE

1/02	INTRODUCED		
1/03	FISCAL NOTE REQUESTED		
1/06	FIRST READING		
1/06	REFERRED TO TAXATION		
1/15	HEARING		
1/15	FISCAL NOTE RECEIVED		
1/15	FISCAL NOTE PRINTED		
1/24	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/27	2ND READING PASSED	92	4
1/28	3RD READING PASSED	92	7
1/28	FISCAL NOTE RECEIVED		
	TRANSMITTED TO SENATE		
1/29	FIRST READING		
1/29	REFERRED TO TAXATION		
2/03	FISCAL NOTE PRINTED		
2/07	HEARING		
2/07	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/03	REFERRED TO FINANCE & CLAIMS		
3/07	HEARING		
3/14	HEARING		
4/09	COMMITTEE REPORT—BILL CONCURRED		
4/10	2ND READING CONCURRED	50	0
4/11	3RD READING CONCURRED	50	0
	RETURNED TO HOUSE WITH AMENDMENTS		
4/19	SIGNED BY SPEAKER		
4/24	SIGNED BY PRESIDENT		
4/25	TRANSMITTED TO GOVERNOR		
4/30	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 444		
	EFFECTIVE DATE: 07/01/97		

HB 172 INTRODUCED BY SOFT *LC0282 DRAFTER: HEFFELFINGER*

REVISE DEFINITIONS RELATED TO PERMANENT, TEMPORARY, AND SEASONAL POSITIONS
BY REQUEST OF DEPARTMENT OF ADMINISTRATION

1/02	INTRODUCED		
1/03	FISCAL NOTE REQUESTED		
1/06	FIRST READING		
1/06	REFERRED TO BUSINESS & LABOR		
1/10	FISCAL NOTE RECEIVED		
1/11	FISCAL NOTE PRINTED		

1/16	HEARING		
1/25	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/28	2ND READING PASSED	60	40
1/29	3RD READING PASSED	65	35
TRANSMITTED TO SENATE			
1/30	FIRST READING		
1/30	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
2/11	HEARING		
3/07	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/12	2ND READING CONCURRED	36	14
3/13	3RD READING CONCURRED	45	5
RETURNED TO HOUSE WITH AMENDMENTS			
4/09	2ND READING AMENDMENTS CONCURRED	85	13
4/11	3RD READING CONCURRED AS AMENDED	83	14
4/15	SIGNED BY SPEAKER		
4/15	SIGNED BY PRESIDENT		
4/17	TRANSMITTED TO GOVERNOR		
4/22	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 339		
	EFFECTIVE DATE: 07/01/97		

HB 173 INTRODUCED BY SQUIRES LC0321 DRAFTER: HEFFELFINGER

PROVIDE ACTUARIAL FUNDING MECHANISMS FOR MINIMUM BENEFIT
ADJUSTMENTS UNDER THE MUNICIPAL POLICE OFFICERS' AND
FIREFIGHTERS' UNIFIED RETIREMENT SYSTEMS
BY REQUEST OF PUBLIC EMPLOYEES' RETIREMENT BOARD

1/02	INTRODUCED		
1/03	FISCAL NOTE REQUESTED		
1/06	FIRST READING		
1/06	REFERRED TO STATE ADMINISTRATION		
1/13	FISCAL NOTE RECEIVED		
1/14	FISCAL NOTE PRINTED		
1/28	HEARING		
2/18	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/21	2ND READING PASSED	78	21
2/26	3RD READING PASSED	79	21
TRANSMITTED TO SENATE			
3/03	FIRST READING		
3/03	REFERRED TO STATE ADMINISTRATION		
3/07	REVISED FISCAL NOTE REQUESTED		
3/11	REVISED FISCAL NOTE RECEIVED		
3/18	REVISED FISCAL NOTE PRINTED		
3/20	HEARING		
3/26	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
4/04	2ND READING CONCURRED	50	0
4/05	3RD READING CONCURRED	49	1
RETURNED TO HOUSE WITH AMENDMENTS			
4/09	2ND READING AMENDMENTS CONCURRED	83	16
4/11	3RD READING CONCURRED AS AMENDED	74	21
4/20	SIGNED BY SPEAKER		
4/24	SIGNED BY PRESIDENT		
4/25	TRANSMITTED TO GOVERNOR		
4/30	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 445		
	EFFECTIVE DATE: 07/01/97		

HB 174 INTRODUCED BY SMITH LC0412 DRAFTER: HEFFELFINGER

EXPAND THE GAME WARDENS' RETIREMENT SYSTEM TO BE A GAME
WARDENS' AND PEACE OFFICERS' RETIREMENT SYSTEM FOR STATE
PEACE OFFICERS

BY REQUEST OF PUBLIC EMPLOYEES' RETIREMENT BOARD

1/03	INTRODUCED		
1/06	FISCAL NOTE REQUESTED		
1/06	FIRST READING		
1/06	REFERRED TO STATE ADMINISTRATION		
1/16	HEARING		
1/16	FISCAL NOTE RECEIVED		
1/20	FISCAL NOTE PRINTED		
1/30	HEARING		
2/18	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/21	2ND READING PASSED	73	24
2/26	3RD READING PASSED	75	25
TRANSMITTED TO SENATE			
3/03	FIRST READING		
3/03	REFERRED TO STATE ADMINISTRATION		
3/07	REVISED FISCAL NOTE REQUESTED		
3/15	REVISED FISCAL NOTE RECEIVED		
3/15	REVISED FISCAL NOTE PRINTED		
3/19	HEARING		
3/22	COMMITTEE REPORT—BILL CONCURRED		
3/27	2ND READING CONCURRED	41	0
3/28	3RD READING CONCURRED	47	1
RETURNED TO HOUSE			
4/04	SIGNED BY SPEAKER		
4/05	SIGNED BY PRESIDENT		
4/07	TRANSMITTED TO GOVERNOR		
4/10	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 223		
	EFFECTIVE DATE: 07/01/97		

HB 175 INTRODUCED BY REAM LC0362 DRAFTER: STERNBERG

ELIMINATE THE STATUTORY PROHIBITION AGAINST HUNTING DEER
WITHIN CITY OR TOWN BOUNDARIES

1/03	INTRODUCED		
1/06	FIRST READING		
1/06	REFERRED TO FISH, WILDLIFE & PARKS		
1/14	HEARING		
1/22	COMMITTEE REPORT—BILL PASSED		
1/23	2ND READING PASSED	52	45
1/24	3RD READING FAILED	48	50
1/25	RECONSIDERED PREVIOUS ACTION AND PLACED BACK ON 3RD READING		
1/27	3RD READING PASSED	56	42
TRANSMITTED TO SENATE			
1/28	FIRST READING		
1/28	REFERRED TO FISH & GAME		
2/04	HEARING		
2/14	TABLED IN COMMITTEE		
	DIED IN COMMITTEE		

HOUSE BILL NO. 172

INTRODUCED BY SOFT

BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING DEFINITIONS RELATED TO PERMANENT TEMPORARY, AND SEASONAL POSITIONS; PROVIDING FOR A CATEGORY OF EMPLOYEE CALLED A SHORT-TERM WORKER; DEFINING "SHORT-TERM WORKER"; CLARIFYING PROVISIONS FROM WHICH CERTAIN EMPLOYEES ARE EXEMPT; ELIMINATING THE REQUIREMENT THAT THE DEPARTMENT OF ADMINISTRATION ADMINISTER A STATE SICK-PAY PLAN; AMENDING SECTIONS 2-18-101, 2-18-102, 2-18-103, 2-18-104, 2-18-111, 2-18-304, 2-18-601, 2-18-603, 2-18-611, 2-18-618, 39-29-101, AND 39-30-103, MCA; REPEALING SECTION 2-18-605, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-18-101, MCA, is amended to read:

"2-18-101. Definitions. As used in parts 1 through 3 and part 10 of this chapter, the following definitions apply:

(1) "Agency" means a department, board, commission, office, bureau, institution, or unit of state government recognized in the state budget.

(2) "Anniversary date", except as modified in part 3 of this chapter, means the month and day on which an employee began the most recent period of uninterrupted state service.

(3) "Base salary" means the amount of compensation paid to an employee, excluding:

(a) state contributions to group benefits provided in 2-18-703;

(b) overtime;

(c) fringe benefits as defined in 39-2-903; and

(d) the longevity allowance provided in 2-18-304.

(4) "Board" means the board of personnel appeals established in 2-15-1705.

(5) "Class" means one or more positions substantially similar with respect to the kind or nature of duties performed, responsibility assumed, and level of difficulty so that the same descriptive title may be used to designate each position allocated to the class, similar qualifications may be required of persons

1 appointed to the positions in the class, and the same pay rate or pay grade may be applied with equity.

2 (6) "Class series benchmark" means a representative position within a class series that is used to
3 illustrate the application of the job evaluation factors that are used to classify positions in the classification
4 plan. A benchmark description describes the duties and responsibilities assigned and the factors applied to
5 the class series benchmark.

6 (7) "Class specification" means a written descriptive statement of the duties and responsibilities
7 characteristic of a class of positions and includes the education, experience, knowledge, skills, abilities, and
8 qualifications necessary to perform the work of the class.

9 (8) "Compensation" means the annual or hourly wage or salary and includes the state contribution
10 to group benefits under the provisions of 2-18-703.

11 (9) "Department" means the department of administration created in 2-15-1001.

12 (10) Except in 2-18-306, "employee" means any state employee other than an employee excepted
13 under 2-18-103 or 2-18-104 from the statewide classification system.

14 (11) "Entry salary" means the entry-level base salary for each grade provided in 2-18-312.

15 (12) "Grade" means the number assigned to a pay range within a pay schedule in part 3 of this
16 chapter.

17 (13) "Job sharing" means the sharing by two or more persons of a position ~~that is considered an~~
18 ~~aggregate or permanent position.~~

19 (14) "Market ratio" means an employee's base salary divided by the market salary for the
20 employee's pay grade.

21 (15) "Market salary" means the midpoint in a pay grade provided in 2-18-312, based on the average
22 base salary that other employers pay to employees in comparable occupations as determined by the
23 department's salary survey of the relevant labor market.

24 (16) "Permanent position employee" means ~~a position so designated on the appropriate agency list~~
25 ~~of authorized positions referenced in 2-18-206 and approved as such in the biennium budget~~ an employee
26 who is designated by an agency as permanent and who has attained or is eligible to attain permanent
27 status.

28 (17) "Permanent status" means the state an employee attains after satisfactorily completing an
29 appropriate probationary period ~~in a permanent position.~~

30 (18) "Personal staff" means those positions occupied by employees appointed by the elected

officials enumerated in Article VI, section 1, of the Montana constitution or by the public service commission as a whole.

(19) "Position" means a collection of duties and responsibilities currently assigned or delegated by competent authority, requiring the full-time, part-time, or intermittent employment of one person.

(20) "Program" means a combination of planned efforts to provide a service.

(21) "Seasonal position employee" means ~~a position so designated on the appropriate agency list of authorized positions referenced in 2-18-206 and that is a permanent position but that is interrupted by the seasonal nature of the position~~ permanent employee who is designated by an agency as seasonal, who performs duties interrupted by the seasons, and who may be recalled without the loss of rights or benefits accrued during the preceding season.

(22) "Short-term worker" means a person who:

(a) is hired by an agency for an hourly wage established by the agency;

(b) may not work for the agency for more than 90 days in a continuous 12-month period;

(c) is not eligible for permanent status;

(d) may not be hired into another position by the agency without a competitive selection process;

and

(e) is not eligible to earn the leave and holiday benefits provided in part 6 or the group insurance benefits provided in part 7.

(23) "Temporary position employee" means ~~a position so designated on the appropriate agency list of authorized positions referenced in 2-18-206, created~~ an employee who:

(a) is designated as temporary by an agency for a definite period of time not to exceed 9 12 months;

(b) performs temporary duties or permanent duties on a temporary basis;

(c) is not eligible for permanent status;

(d) is terminated at the end of the employment period; and

(e) is not eligible to become a permanent employee without a competitive selection process."

Section 2. Section 2-18-102, MCA, is amended to read:

"2-18-102. Personnel administration -- general policy setting. (1) Except as otherwise provided by law or collective bargaining agreement, the department shall:

(a) encourage and exercise leadership in the development of effective personnel administration within the several agencies in the state and make available the facilities of the department to this end;

(b) foster and develop programs for recruitment and selection of capable persons for ~~permanent, seasonal, temporary, and other types of positions~~ employment and for the improvement of employee effectiveness, including training, ethical conduct, safety, health, counseling, welfare, discipline, grievances, and evaluation for productivity and retention in permanent status;

(c) foster, develop, and promote job sharing in agencies;

(d) investigate from time to time the operation and effect of parts 1 and 2 of this chapter and the policies made under those parts and report the findings and recommendations to the governor;

(e) establish policies, procedures, and forms for the maintenance of records of all employees in the state service;

(f) apply and carry out parts 1 and 2 and the policies under those parts and perform any other lawful acts that may be necessary or desirable to carry out the purposes and provisions of parts 1 and 2.

(2) The department may delegate authority granted to it under parts 1 and 2 to agencies in the state service that effectively demonstrate the ability to carry out the provisions of parts 1 and 2, provided that the agencies remain in compliance with policies, procedures, timetables, and standards established by the department.

(3) The department shall develop and issue personnel policies for the state and shall adopt rules to implement this part, except 2-18-111. Adequate public notice must be given to all interested parties of proposed changes or additions to the personnel policies before the date on which they are to take effect. If requested by any of the affected parties, the department shall schedule a public hearing on proposed changes or additions to the personnel policies before the date on which they are to take effect.

(4) The department shall develop model rules of conduct for all state employees based upon the provisions of Title 2, chapter 2. The department shall provide employees with a pamphlet summarizing the provisions of Title 2, chapter 2. Each state agency shall adopt the model rules of conduct and additional rules appropriate to the specific circumstances of the agency."

Section 3. Section 2-18-103, MCA, is amended to read:

"2-18-103. Officers and employees excepted. (1) Parts 1 and 2 through 3 and 10 do not apply to the following ~~positions~~ officers and employees in state government:

- 1 (a) elected officials;
- 2 (b) county assessors and their chief ~~deputy~~ deputies;
- 3 (c) employees of the office of consumer counsel;
- 4 (d) judges and employees of the judicial branch;
- 5 (e) members of boards and commissions appointed by the governor, the legislature, or other elected
- 6 state officials;
- 7 (f) officers or members of the militia;
- 8 (g) agency heads appointed by the governor;
- 9 (h) academic and professional administrative personnel with individual contracts under the authority
- 10 of the board of regents of higher education;
- 11 (i) academic and professional administrative personnel and live-in houseparents who have entered
- 12 into individual contracts with the state school for the deaf and blind under the authority of the state board
- 13 of public education;
- 14 (j) teachers under the authority of the department of corrections or the department of public health
- 15 and human services;
- 16 (k) investment officer, assistant investment officer, executive director, and three professional staff
- 17 positions of the board of investments;
- 18 (l) four professional staff positions under the board of oil and gas conservation;
- 19 (m) assistant director for security of the Montana state lottery;
- 20 (n) executive director and senior investment officer of the Montana board of science and
- 21 technology development;
- 22 (o) executive director and employees of the state compensation insurance fund;
- 23 (p) state racing stewards employed by the executive secretary of the Montana board of
- 24 horseracing;
- 25 (q) executive director of the Montana wheat and barley committee;
- 26 (r) commissioner of banking and financial institutions; and
- 27 (s) training coordinator for county attorneys.
- 28 (2) Employees of an entity of the legislative branch, other than the office of consumer counsel, are
- 29 exempt from the application of 2-18-1011 through 2-18-1013. With respect to entities of the legislative
- 30 branch, other than the office of consumer counsel:

(a) as used in parts 1 through 3 of this chapter, references to the "department of administration" or "department" apply to the legislative council established by 5-11-101, which may delegate administrative duties to the legislative services division established by 5-11-111;

(b) as used in 2-18-102, the term "governor" applies to the legislature; and

(c) as used in 2-18-204, the term "budget director" applies to the "approving authority" as defined in 17-7-102."

Section 4. Section 2-18-104, MCA, is amended to read:

"2-18-104. Exemption for personal staff -- limit. (1) Subject to the limitations in subsections (2) and (3), members of a personal staff are exempt from ~~the application of 2-18-204, 2-18-205, 2-18-207, and 2-18-1011 through 2-18-1013~~ parts 1 through 3 and 10.

(2) The personal staff who are exempted by subsection (1) may not exceed 10 unless otherwise approved by the department according to criteria developed by the department. Under no circumstances may the total exemptions of each elected official exceed 15.

(3) The number of members of the personal staff of the public service commission who are exempted by subsection (1) may not exceed 10."

Section 5. Section 2-18-111, MCA, is amended to read:

"2-18-111. Hiring preference for residents of Indian reservations for state jobs within reservation -- rules. (1) A state agency that operates within an Indian reservation shall give a preference in hiring for ~~a position of~~ employment with the state agency to an Indian resident of the reservation who has substantially equal qualifications for the position.

(2) The commissioner of labor and industry shall enforce this section, and investigate complaints of its violation, and may adopt rules to implement this section.

(3) For the purposes of this section, the following definitions apply:

(a) "Employment" means being employed as a permanent, temporary, or seasonal employee as defined in 2-18-101 for a state position. The term does not include:

(i) a state elected official;

(ii) appointment by an elected official to a body, such as a board, commission, committee, or council;

1 (iii) appointment by an elected official to a public office if the appointment is provided for by law;

2 or

3 (iv) engagement as an independent contractor or employment by an independent contractor.

4 (b) "Indian" means a person who is enrolled or who is a lineal descendant of a person enrolled upon
5 an enrollment listing of the bureau of Indian affairs or upon the enrollment listing of a recognized Indian
6 tribe, domiciled in the United States.

7 ~~(b) "Position" means a permanent, temporary, or seasonal position as defined in 2-18-101 for a~~
8 ~~state position. The term does not include:~~

9 ~~(i) a state elected office;~~

10 ~~(ii) appointment by an elected official to a body, such as a board, commission, committee, or~~
11 ~~council;~~

12 ~~(iii) appointment by an elected official to a public office if the appointment is provided for by law;~~

13 ~~or~~

14 ~~(iv) engagement as an independent contractor or employment by an independent contractor.~~

15 (c) "State agency" means a department, office, board, bureau, commission, agency, or other
16 instrumentality of the executive or judicial branches of the government of this state."

17
18 **Section 6.** Section 2-18-304, MCA, is amended to read:

19 **"2-18-304. Longevity allowance.** (1) (a) (i) Effective July 1, 1995, through the last day of the pay
20 period immediately preceding the pay period that includes October 1, 1995, in addition to the compensation
21 provided for in 2-18-303, 2-18-312, 2-18-313, 2-18-314, or 2-18-315, each employee who has completed
22 5 years of uninterrupted state service must receive 9/10 of 1% of the employee's base salary multiplied
23 by the number of completed, contiguous 5-year periods of uninterrupted state service.

24 (ii) Effective on the first day of the pay period that includes October 1, 1995, in addition to the
25 compensation provided for in 2-18-303, 2-18-312, 2-18-313, 2-18-314, or 2-18-315, each employee who
26 has completed 5 years of uninterrupted state service must receive 1.5% of the employee's base salary
27 multiplied by the number of completed, contiguous 5-year periods of uninterrupted state service.

28 (b) Service to the state is not interrupted by authorized leaves of absence.

29 (2) (a) For the purpose of determining years of service under this section, an employee must be
30 credited with 1 year of service for each period of:

(i) 2,080 hours of service following the employee's date of employment; an employee must be credited with 80 hours of service for each biweekly pay period in which the employee is in a pay status or on an authorized leave of absence without pay, regardless of the number of hours of service in the pay period; or

(ii) 12 uninterrupted calendar months following the employee's date of employment in which the employee was in a pay status or on an authorized leave of absence without pay, regardless of the number of hours of service in any month. An employee of a school at a state institution or the university system must be credited with 1 year of service if the employee is employed for an entire academic year.

(b) State agencies, other than the university system and a school at a state institution, shall use the method provided in subsection (2)(a)(i) to calculate years of service under this section.

(3) For the purposes of calculating longevity, employment as a short-term worker does not apply toward years of service."

Section 7. Section 2-18-601, MCA, is amended to read:

"2-18-601. Definitions. For the purpose of this part, except 2-18-620, the following definitions apply:

(1) "Agency" means any legally constituted department, board, or commission of state, county, or city government or any political subdivision thereof.

(2) "Break in service" means a period of time in excess of 5 working days when the person is not employed and that severs continuous employment.

(3) "Continuous employment" means working within the same jurisdiction without a break in service of more than 5 working days or without a continuous absence without pay of more than 15 working days.

(4) "Employee" means any person employed by an agency except elected state, county, and city officials, schoolteachers, and persons contracted as independent contractors or hired under personal services contracts.

(5) "Full-time employee" means an employee who normally works 40 hours a week.

(6) "Holiday" means a scheduled day off with pay to observe a legal holiday, as specified in 1-1-216 or 20-1-305, except Sundays.

(7) "Part-time employee" means an employee who normally works less than 40 hours a week.

(8) "Permanent employee" means ~~an employee who is assigned to a position designated as permanent on the appropriate list of authorized positions referenced in 2-18-206 and approved as such in the biennium budget~~ a permanent employee as defined in 2-18-101.

(9) "Seasonal employee" means ~~an employee assigned to a position designated as seasonal on the appropriate agency list of authorized positions referenced in 2-18-206 and for which the agency has a permanent need but which is interrupted by the seasonal nature of the assignment~~ a seasonal employee as defined in 2-18-101.

(10) "Sick leave" means a leave of absence with pay for a sickness suffered by an employee or ~~his~~ a member of the employee's immediate family or for a permanent state employee who is eligible for parental leave under the provisions of 2-18-606.

(11) "~~Sick pay plan~~" means ~~a plan that:~~

~~(a) provides for an agency to make payments in lieu of wages to employees on account of sickness or accident disability; and~~

~~(b) meets the requirements of 42 U.S.C. 409(b) or (d).~~

~~(12)~~ "Temporary employee" means ~~an employee assigned to a position designated as temporary on the appropriate agency list of authorized positions referenced in 2-18-206, created for a definite period of time not to exceed 9 months~~ a temporary employee as defined in 2-18-101.

~~(13)~~ (12) "Transfer" means a change of employment from one agency to another agency in the same jurisdiction without a break in service.

~~(14)~~ (13) "Vacation leave" means a leave of absence with pay for the purpose of rest, relaxation, or personal business at the request of the employee and with the concurrence of the employer."

Section 8. Section 2-18-603, MCA, is amended to read:

"2-18-603. **Holidays -- observance when falling on employee's day off.** (1) (a) ~~Any~~ A full-time employee who is scheduled for a day off on a day ~~which~~ that is observed as a legal holiday, except Sundays, ~~shall be~~ is entitled to receive a day off with pay either on the day preceding the holiday or on another day following the holiday in the same pay period or as scheduled by the employee and ~~his~~ the employee's supervisor, whichever allows a day off in addition to the employee's regularly scheduled days off, provided the employee is in a pay status on ~~his~~ the employee's last regularly scheduled working day immediately before the holiday or on ~~his~~ the employee's first regularly scheduled working day immediately

1 after the holiday.

2 (b) Part-time employees receive pay for the holiday on a prorated basis according to rules adopted
3 by the department of administration or appropriate administrative officer under 2-18-604.

4 (c) A short-term worker may not receive holiday pay.

5 (2) For purposes of this section, the term "employee" does not include nonteaching school district
6 employees."

7

8 **Section 9.** Section 2-18-611, MCA, is amended to read:

9 "2-18-611. **Annual vacation leave.** (1) Each permanent full-time employee shall earn annual
10 vacation leave credits from the first day of employment. Vacation leave credits earned ~~shall~~ must be
11 credited at the end of each pay period. However, employees are not entitled to any vacation leave with pay
12 until they have been continuously employed for a period of 6 calendar months.

13 (2) Seasonal employees ~~shall~~ earn vacation credits. However, ~~such persons~~ seasonal employees
14 must be employed for 6 qualifying months before they may use the vacation credits. In order to qualify,
15 ~~such seasonal employees must~~ shall immediately report back for work when operations resume in order to
16 avoid a break in service.

17 (3) Permanent part-time employees are entitled to prorated annual vacation benefits if they have
18 worked the qualifying period.

19 (4) An employee may not accrue annual vacation leave credits while in a leave-without-pay status.

20 (5) Temporary employees ~~do not~~ earn vacation leave credits, ~~except that a temporary employee~~
21 ~~who is subsequently hired into a permanent position within the same jurisdiction without a break in service~~
22 ~~and temporary employees who are employed continuously longer than 6 months may count as earned leave~~
23 ~~credits for the immediate term of temporary employment~~ but may not use the credits until after working
24 for 6 qualifying months.

25 (6) A short-term worker, as defined in 2-18-101, may not earn vacation leave credits, and time
26 worked as a short-term worker does not apply toward the person's rate of earning vacation leave credits."

27

28 **Section 10.** Section 2-18-618, MCA, is amended to read:

29 "2-18-618. **Sick leave.** (1) A permanent full-time employee earns sick leave credits from the first
30 day of employment. For calculating sick leave credits, 2,080 hours (52 weeks x 40 hours) equals 1 year.

Sick leave credits must be credited at the end of each pay period. Sick leave credits are earned at the rate of 12 working days for each year of service without restriction as to the number of working days that may be accumulated. Employees are not entitled to be paid sick leave until they have been continuously employed 90 days.

(2) An employee may not accrue sick leave credits while in a leave-without-pay status.

(3) Permanent part-time employees are entitled to prorated leave benefits if they have worked the qualifying period.

(4) Full-time temporary and seasonal employees are entitled to sick leave benefits provided they work the qualifying period.

(5) A short-term worker may not earn sick leave credits.

(6) An employee who terminates employment with the agency is entitled to a lump-sum payment equal to one-fourth of the pay attributed to the accumulated sick leave. The pay attributed to the accumulated sick leave must be computed on the basis of the employee's salary or wage at the time ~~he~~ the employee terminates his employment with the state, county, or city. Accrual of sick leave credits for calculating the lump-sum payment provided for in this subsection begins July 1, 1971. The payment is the responsibility of the agency in which the sick leave accrues. However, an employee does not forfeit any sick leave rights or benefits ~~he had~~ accrued prior to July 1, 1971. However, when an employee transfers between agencies within the same jurisdiction, ~~he~~ the employee is not entitled to a lump-sum payment. In a transfer between agencies, the receiving agency shall assume the liability for the accrued sick leave credits earned after July 1, 1971, and transferred with the employee.

~~(6)~~(7) An employee who receives a lump-sum payment pursuant to this section and who is again employed by any agency may not be credited with ~~any~~ sick leave for which the employee has previously been compensated.

~~(7)~~(8) Abuse of sick leave is cause for dismissal and forfeiture of the lump-sum payments provided for in this section.

~~(8)~~(9) An employee may contribute any portion of ~~his~~ the employee's accumulated sick leave to a nonrefundable sick leave fund for state employees and becomes eligible to draw upon the fund if an extensive illness or accident exhausts ~~his~~ the employee's accumulated sick leave. The department of administration shall, in consultation with the state employee group benefits advisory council, provided for in 2-15-1016, administer the sick leave fund and adopt rules to implement this subsection.

1 ~~(9)~~(10) A local government may establish and administer through local rule a sick leave fund into
2 which its employees may contribute a portion of their accumulated sick leave."

3
4 **Section 11.** Section 39-29-101, MCA, is amended to read:

5 **"39-29-101. Definitions.** For the purposes of this chapter, the following definitions apply:

6 (1) "Active duty" means full-time duty with military pay and allowances in the armed forces, except
7 for training, determining physical fitness, or service in the reserve or national guard.

8 (2) "Armed forces" means the United States:

9 (a) army, navy, air force, marine corps, and coast guard; and

10 (b) merchant marine for service recognized by the United States department of defense as active
11 military service for the purpose of laws administered by the department of veterans affairs.

12 (3) "Disabled veteran" means a person:

13 (a) whether or not the person is a veteran as defined in this section, who was separated under
14 honorable conditions from active duty in the armed forces and has established the present existence of a
15 service-connected disability or is receiving compensation, disability retirement benefits, or pension because
16 of a law administered by the department of veterans affairs or a military department; or

17 (b) who has received a purple heart medal.

18 (4) "Eligible relative" means:

19 (a) the unmarried surviving spouse of a veteran or disabled veteran;

20 (b) the spouse of a disabled veteran who is unable to qualify for appointment to a position;

21 (c) the mother of a veteran who died under honorable conditions while serving in the armed forces

22 if:

23 (i) the mother's spouse is totally and permanently disabled; or

24 (ii) the mother is the widow of the father of the veteran and has not remarried;

25 (d) the mother of a service-connected permanently and totally disabled veteran if:

26 (i) the mother's spouse is totally and permanently disabled; or

27 (ii) the mother is the widow of the father of the veteran and has not remarried.

28 (5) "Position" means a position occupied by a permanent, temporary, or seasonal position employee
29 as defined in 2-18-101 for a the state position or a similar permanent, temporary, or seasonal position
30 employee with a public employer other than the state. The term does not include:

1 (a) a state or local elected office;

2 (b) appointment by an elected official to a body such as a board, commission, committee, or
3 council;

4 (c) appointment by an elected official to a public office if the appointment is provided for by law;

5 (d) a department head appointment by the governor or an executive department head appointment
6 by a mayor, city manager, county commissioner, or other chief administrative or executive officer of a local
7 government; or

8 (e) engagement as an independent contractor or employment by an independent contractor.

9 (6) "Public employer" means:

10 (a) a department, office, board, bureau, commission, agency, or other instrumentality of the
11 executive, legislative, or judicial branches of the government of this state;

12 (b) a unit of the Montana university system;

13 (c) a school district or community college; and

14 (d) a county, city, or town.

15 (7) "Scored procedure" means a written test, structured oral interview, performance test, or other
16 selection procedure or a combination of these procedures that results in a numerical score to which
17 percentage points may be added.

18 (8) "Under honorable conditions" means a discharge or separation from active duty characterized
19 by the armed forces as under honorable conditions. The term includes honorable discharges and general
20 discharges but does not include dishonorable discharges or other administrative discharges characterized
21 as other than honorable.

22 (9) "Veteran" means a person who:

23 (a) was separated under honorable conditions from active duty in the armed forces after having
24 served more than 180 consecutive days, other than for training; or

25 (b) as a member of a reserve component under an order of active duty pursuant to 10 U.S.C.
26 672(a), (d), or (g), 10 U.S.C. 673, or 10 U.S.C. 673b served on active duty during a period of war or in
27 a campaign or expedition for which a campaign badge is authorized and was discharged or released from
28 duty under honorable conditions."

29
30 **Section 12.** Section 39-30-103, MCA, is amended to read:

1 **"39-30-103. Definitions.** For the purposes of this chapter, the following definitions apply:

2 (1) "Eligible spouse" means the spouse of a handicapped person determined by the department of
3 public health and human services to have a 100% disability who is unable to use the employment
4 preference because of the person's disability.

5 (2) "Handicapped person" means an individual certified by the department of public health and
6 human services to have a physical or mental impairment that substantially limits one or more major life
7 activities, such as writing, seeing, hearing, speaking, or mobility, and that limits the individual's ability to
8 obtain, retain, or advance in employment.

9 (3) (a) "Initial hiring" means a personnel action for which applications are solicited from outside the
10 ranks of the current employees of:

11 (i) a department, as defined in 2-15-102, for a position within the executive branch;

12 (ii) a legislative agency for a position within the legislative branch;

13 (iii) a judicial agency, such as the office of supreme court administrator, office of supreme court
14 clerk, state law library, or similar office in a state district court for a position within the judicial branch;

15 (iv) a city or town for a municipal position, including a city or municipal court position; and

16 (v) a county for a county position, including a justice's court position.

17 (b) A personnel action limited to current employees of a specific public entity identified in
18 ~~subsections subsection (3)(a)(i) through (3)(a)(v)~~, current employees in a reduction-in-force pool who have
19 been laid off from a specific public entity identified in ~~subsections subsection (3)(a)(i) through (3)(a)(v)~~, or
20 current participants in a federally authorized employment program is not an initial hiring.

21 (4) (a) "Mental impairment" means:

22 (i) suffering from a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or
23 any other neurologically handicapping condition closely related to mental retardation and requiring treatment
24 similar to that required by mentally retarded individuals; or

25 (ii) an organic or mental impairment that has substantial adverse effects on an individual's cognitive
26 or volitional functions.

27 (b) The term mental impairment does not include alcoholism or drug addiction and does not include
28 any mental impairment, disease, or defect that has been asserted by the individual claiming the preference
29 as a defense to any criminal charge.

30 (5) "Position" means a position occupied by a permanent or seasonal position employee as defined

in 2-18-101 for a ~~the state position~~ or a position occupied by a similar permanent or seasonal ~~position~~ employee with a public employer other than the state. However, the term does not include:

(a) a position occupied by a temporary ~~position employee~~ as defined in 2-18-101 for a ~~the state position~~ or a similar temporary ~~position employee~~ with a public employer other than the state;

(b) a state or local elected official;

(c) employment as an elected official's immediate secretary, legal advisor, court reporter, or administrative, legislative, or other immediate or first-line aide;

(d) appointment by an elected official to a body such as a board, commission, committee, or council;

(e) appointment by an elected official to a public office if the appointment is provided for by law;

(f) a department head appointment by the governor or an executive department head appointment by a mayor, city manager, county commissioner, or other chief administrative or executive officer of a local government; or

(g) engagement as an independent contractor or employment by an independent contractor.

(6) (a) "Public employer" means:

(i) any department, office, board, bureau, commission, agency, or other instrumentality of the executive, judicial, or legislative branch of the government of the state of Montana; and

(ii) any county, city, or town.

(b) The term does not include a school district, a vocational-technical program, a community college, the board of regents of higher education, the Montana university system, a special purpose district, an authority, or any political subdivision of the state other than a county, city, or town.

(7) "Substantially equal qualifications" means the qualifications of two or more persons among whom the public employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons."

NEW SECTION. Section 13. Repealer. Section 2-18-605, MCA, is repealed.

NEW SECTION. Section 14. Effective date. [This act] is effective July 1, 1997.

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0172, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

A bill revising definitions related to permanent, temporary, and seasonal positions, and creating a new category known as the short-term worker.

FISCAL IMPACT:

Passage of HB0172 will not fiscally impact the state.

Dave Lewis 1-9-97
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Loren Soft
LOREN SOFT, PRIMARY SPONSOR DATE

Fiscal Note for HB0172, as introduced

HB 172

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
55th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON BUSINESS & LABOR

Call to Order: By **CHAIRMAN BRUCE T. SIMON**, on January 16, 1997,
at 8:00 A.M., in Room 104

ROLL CALL

Members Present:

Rep. Bruce T. Simon, Chairman (R)
Rep. Paul Sliter, Vice Chairman (Majority) (R)
Rep. Robert J. "Bob" Pavlovich, Vice Chairman (Minority) (D)
Rep. Joe Barnett (R)
Rep. Rod Bitney (R)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Charles R. Devaney (R)
Rep. David Ewer (D)
Rep. Kim Gillan (D)
Rep. Billie Krenzler (D)
Rep. Bob Lawson (R)
Rep. Rod Marshall (R)
Rep. Gay Ann Masolo (R)
Rep. Wes Prouse (R)
Rep. Carolyn M. Squires (D)
Rep. Jay Stovall (R)
Rep. Cliff Trexler (R)
Rep. Joe Tropila (D)
Rep. Carley Tuss (D)

Members Excused: None.

Members Absent: None.

Staff Present: Stephen Maly, Legislative Services Division
Pati O'Reilly, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 95; HB 78; HB 172; HB 115
Executive Action: HJR 3; HB 115 *HB 147*

HEARING ON

Opening Statement by Sponsor: REP. SAM KITZENBERG introduced the
bill.

{Tape: 1; Side: 1; Approx. Time Count: 2.1; Comments: None.}

Proponents' Testimony: None.

Opponents' Testimony: None.

Informational Testimony: None.

Questions From Committee Members and Responses:

{Tape: 1; Side: 1; Approx. Time Count: 14.1; Comments: None.}

Closing by Sponsor: REP. KITZENBERG closes on the bill.

{Tape: 1; Side: 2; Approx. Time Count: 1.7; Comments: None.}

HEARING ON HB 78

Opening Statement by Sponsor: REP. DICK SIMPKINS, H.D. 49
introduced the bill

{Tape: 1; Side: 2; Approx. Time Count: 3.3; Comments: None.}

Proponents' Testimony:

Phil Kiser, Triple Play.

{Tape: 1; Side: 2; Approx. Time Count: 12.7; Comments: None.}

Gary Blewett, Liquor Division, Department of Revenue.

{Tape: 1; Side: 2; Approx. Time Count: 17.1; Comments: None.}

Opponents' Testimony:

Mark Staples, Montana Tavern Association.

{Tape: 1; Side: 2; Approx. Time Count: 22.8; Comments: None.}

Informational Testimony:

Janet Jessup, Gambling Division, Department of Justice.

{Tape: 1; Side: 2; Approx. Time Count: 19.6; Comments: None.}

Questions From Committee Members and Responses:

{Tape: 1; Side: 2; Approx. Time Count: 34.4; Comments: None.}

Closing by Sponsor: REP. SIMPKINS closes on the bill.

{Tape: 2; Side: 1; Approx. Time Count: 7.5; Comments: None.}

HEARING ON HB 172

Opening Statement by Sponsor: REP. LOREN SOFT, H.D. 12
introduced the bill. EXHIBIT 2.

{Tape: 2; Side: 1; Approx. Time Count: 12.0; Comments: None.}

Proponents' Testimony:

Mark Cress, Personnel Division, Department of Administration.
EXHIBIT 3.

{Tape: 2; Side: 1; Approx. Time Count: 20.7; Comments: None.}

Douglas D. Denler, Department of Fish, Wildlife & Parks.

{Tape: 2; Side: 1; Approx. Time Count: 25.4; Comments: None.}

Russ McDonald, Human Resources Division, Department of Transportation. EXHIBIT 4.

{Tape: 2; Side: 1; Approx. Time Count: 27.2; Comments: None.}

Jack Holerstein, Montana Association of Counties.

{Tape: 2; Side: 1; Approx. Time Count: 30.8; Comments: None.}

Lance Melton, Montana School Board Association.

{Tape: 2; Side: 1; Approx. Time Count: 33.6; Comments: None.}

Opponents' Testimony:

David Holzer, AFL-CIO

{Tape: 1; Side: 2; Approx. Time Count: 34.3; Comments: None.}

Informational Testimony: None.

Questions From Committee Members and Responses:

{Tape: 2; Side: 2; Approx. Time Count: 37.4; Comments: None.}

Closing by Sponsor: REP. SOFT closes on the bill.

{Tape: 2; Side: 2; Approx. Time Count: .4; Comments: None.}

HEARING ON HB 115

Opening Statement by Sponsor: REP. DUANE GRIMES, H.D. 39 introduced the bill.

{Tape: 2; Side: 2; Approx. Time Count: 1.1; Comments: None.}

Proponents' Testimony:

Dennis Zeiler, Department of Labor and Industry. EXHIBIT 5.

Jerry Driscoll, Montana State Construction and Trades Council.

{Tape: 2; Side: 2; Approx. Time Count: 11.5; Comments: None.}

Opponents' Testimony: None.

Informational Testimony: None.

Questions From Committee Members and Responses:

{Tape: 2; Side: 2; Approx. Time Count: 14.8; Comments: None.}

Closing by Sponsor: REP. GRIMES closes on the bill.

{Tape: 2; Side: 2; Approx. Time Count: 19.0; Comments: None.}

EXHIBIT 2
DATE 1/14/97
HB 172

Amendments to House Bill No. 172
First Reading Copy

Requested by Rep. Loren Soft
For the Committee on House Business and Labor

Prepared by Sheri Heffelfinger
January 14, 1997

1. Page 9.

Following: line 7

Insert: "(10) "Short-term worker" means a short-term worker as
defined in 2-18-101."

Renumber: subsequent subsections

**Testimony in Support of House Bill 172
Committee on Business and Labor
January 16, 1997**

Mr. Chairman, members of the committee, My name is Mark Cress. I am the Administrator of the State Personnel Division. I am here in support of House Bill 172.

Representative Soft did an excellent and complete job of describing the provisions and purpose of HB 172.

This bill was initiated by the Human Resource Advisory Group. This is a group of Personnel Directors representing many of our larger agencies. They meet regularly to discuss issues concerning personnel policies, selection of employees and so on. Many of the agencies have expressed concerns for some time with the management of temporary and seasonal employees. An initial proposal was prepared last spring to clarify the employment definitions in the law. This proposal was shared with agency personnel officers, union representatives, local government associations and representatives of temporary employment companies. Input from these various group was used to draft House Bill 172.

(1) In Section 1 and in Section 7, the bill clarifies definitions so that employment status for public employees is clearly attached to the employee rather than to the position they occupy

(2) The bill extends the allowable period of temporary employment from 9 months to 12 months. This period is more consistent with project timelines and fiscal years.

(3) The bill creates a short-term worker status. This status provides public employers with a quick and efficient way to meet short-term and emergency needs. An individual can not be employed as a short-term worker for an agency for more than 90 days in any 12 month period.

(4) The bill clarifies that short-term workers can not move into another employment status without going through a competitive selection procedure. This ensures that agencies use appropriate selection procedures including applying statutory employment preferences when hiring longer-term and permanent employees.

HB 172 will assist public agencies in effectively managing temporary, seasonal and short-term workers and I urge your support.

Thank you.



Montana Department
of Transportation

2701 Prospect Avenue
PO Box 201001
Helena MT 59620-1001

Marc Racicot, Governor

EXHIBIT 4

DATE 1/16/97

HB 172

Memorandum

To: Chair
House Business and Labor Committee

From: Russell G. McDonald *Russell G. McDonald*
Human Resources
Montana Department of Transportation

Date: January 15, 1997

Subject: Comments in Support of House Bill 172

The proposed changes simplify the definitions of temporary, seasonal, and permanent employees, and makes them easier to use and understand.

Extending the temporary employment period from nine months to one year greatly improves our ability to effectively use temporary employees. From time to time, we use temporary employees from time to time for special projects, such as the fuel tax compliance follow-up we completed in the last biennium. When these projects extend past the nine-month limit for the employee involved, progress on the project is delayed for completion of another temporary selection process. At times, the same temporary person is rehired, but when that isn't the case, the project is further delayed by the training time for the new employee.

The additional three months allowed by this bill would enable us to assign temporary employees to consecutive or overlapping projects, reducing the need for multiple selections.

We also use temporary employees to replace employees who are injured on the job or develop long term illnesses. A number of these absences exceed nine months. Having the flexibility of an additional three months for a temporary replacement would resolve most of our situations. An absence of a year means its likely the employee will not be able to return to work and a permanent replacement will be needed.

We also have need for temporary employees for brief, concentrated, often unexpected, activities. The "short term worker" provisions of this legislation would permit us to

HB 172
January 15, 1997
Page 2

the employee without the administrative requirements associated with more long term activities.

The Department of Transportation supports this legislation and asks that you give it favorable consideration.

HOUSE OF REPRESENTATIVES

BUSINESS AND LABOR COMMITTEE

ROLL CALL

DATE 1/16/97

NAME	PRESENT	ABSENT	EXCUSED
Bruce Simon, Chairman	✓		
Paul Sliter Vice Chairman	X		
Bob Pavlovich, Vice Chairman	X		
Joe Barnett	X		
Rod Bitney	X		
Sylvia Bookout	X		
Charles Devaney	X		
David Ewer	X		
Kim Gillan	X		
Billie Krenzler	X		
Bob Lawson	X		
Rod Marshall	X		
Gay Ann Masolo	X		
Wes Prouse	X		
Carolyn Squires	X		
Jay Stovall	X		
Cliff Trexler	X		
Joe Tropila	X		
Carley Tuss	X		

**MONTANA HOUSE OF REPRESENTATIVES
VISITORS REGISTER**

DATE 1-16-97

BILL NO. HB 172

SPONSOR(S) _____

TYPE
PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE

CIRCLE

NAME

ADDRESS

REPRESENTING

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PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & LABOR

Call to Order: By **CHAIRMAN BRUCE SIMON**, on January 24, 1997, at 8:00 AM , in Room 104.

ROLL CALL

Members Present:

Rep. Bruce T. Simon, Chairman (R)
Rep. Paul Sliter, Vice Chairman (Majority) (R)
Rep. Robert J. "Bob" Pavlovich, Vice Chairman (Minority) (D)
Rep. Joe Barnett (R)
Rep. Rod Bitney (R)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Charles R. Devaney (R)
Rep. David Ewer (D)
Rep. Kim Gillan (D)
Rep. Billie Krenzler (D)
Rep. Bob Lawson (R)
Rep. Rod Marshall (R)
Rep. Gay Ann Masolo (R)
Rep. Wes Prouse (R)
Rep. Carolyn M. Squires (D)
Rep. Jay Stovall (R)
Rep. Cliff Trexler (R)
Rep. Joe Tropila (D)
Rep. Carley Tuss (D)

Members Excused: REP. ROD BITNEY

Members Absent: None.

Staff Present: Stephen Maly, Legislative Services Division
Pati O'Reilly, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 58; SB 135 (1/21/97)
Executive Action: SB 58; SB 135; HB 266; HB 286;
HB 172

HEARING ON SB 135

Opening Statement by Sponsor: SENATOR BRUCE CRIPPEN, S. D. 10 introduced the bill.

{Tape: 1; Side: 1; Approx. Time Count: 1./0; Comments: None.}

EXECUTIVE ACTION ON HB 286

Motion: REP. SQUIRES MOVED HB 286 DO PASS.

{Tape: 1; Side: 2; Approx. Time Count: 20.6; Comments: None.}

Motion: REP. SLITER MOVED TO ADOPT SLITER AMENDMENT. EXHIBIT 5.

Action suspended until later in day.

{Tape: 1; Side: 2; Approx. Time Count: 22.0; Comments: None.}

Motion: REP. SLITER WITHDRAWS SLITER AMENDMENT.

{Tape: 1; Side: 2; Approx. Time Count: 23.0; Comments: None.}

Motion/Vote: REP. SLITER MOVED TO ADOPT SLITER AMENDMENT. Motion carried unanimously.

{Tape: 2; Side: 1; Approx. Time Count: 1.8; Comments: None.}

Motion/Vote: REP. SLITER MOVED HB 286 DO PASS AS AMENDED. Motion carried unanimously.

{Tape: 2; Side: 1; Approx. Time Count: 3.2; Comments: None.}

EXECUTIVE ACTION ON HB 172

Motion: REP. TREXLER MOVED HB 172 DO PASS.

{Tape: 1; Side: 2; Approx. Time Count: 27.4; Comments: None.}

Motion/Vote: REP. TREXLER MOVES TO ADOPT REP. SOFT AMENDMENT.

Motion carried 18-1.

{Tape: 1; Side: 2; Approx. Time Count: 28.8; Comments: None.}

Motion/Vote: REP. TREXLER MOVED HB 172 DO PASS AS AMENDED.

Motion carried 14-5. REPS. PAVLOVICH, KRENZLER, TUSS, SQUIRES AND GILLAN voted no.

{Tape: 1; Side: 2; Approx. Time Count: 29.0; Comments: None.}

EXECUTIVE ACTION ON SB 58

Motion: REP. SLITER MOVED SB 58 DO CONCUR.

{Tape: 1; Side: 2; Approx. Time Count: 30.0; Comments: None.}

Motion: REP. SLITER MOVED TO ADOPT CADBY AMENDMENT.

{Tape: 1; Side: 2; Approx. Time Count: 30.6; Comments: None.}

Discussion: {Tape: 1; Side: 2; Approx. Time Count: 30.7; Comments: None.}

Motion: REP. SLITER WITHDRAWS MOTION TO ADOPT CADBY AMENDMENT.

{Tape: 1; Side: 2; Approx. Time Count: 31.0; Comments: None.}

HOUSE OF REPRESENTATIVES

BUSINESS AND LABOR COMMITTEE

ROLL CALL

DATE 1/24/97

NAME	PRESENT	ABSENT	EXCUSED
Bruce Simon, Chairman	X		
Paul Sliter Vice Chairman	X		
Bob Pavlovich, Vice Chairman	X		
Joe Barnett	X		
Rod Bitney	X		X
Sylvia Bookout	X		
Charles Devaney	X		
David Ewer	X		
Kim Gillan	X		
Billie Krenzler	X		
Bob Lawson	X		
Rod Marshall	X		
Gay Ann Masolo	X		
Wes Prouse	X		
Carolyn Squires	X		
Jay Stovall	X		
Cliff Trexler	X		
Joe Tropila	X		
Carley Tuss	X		

House
Business
&
Labor

COMMITTEE ABSENTEE BALLOT

Date: 1/24/97

I hereby authorize Rep. Sliter

to cast my vote(s) as follows:

HB 266 NO

HB 172 AYE

SB 58 AYE

SB 135 AYE

HB 286 AYE

Representative Red Bitney



HOUSE STANDING COMMITTEE REPORT

January 24, 1997

Page 1 of 1

Mr. Speaker: We, the committee on **Business and Labor** report that **House Bill 172** (first reading copy -- white) **do pass as amended.**

Signed:

A handwritten signature in black ink, appearing to read "Bruce Simon", is written over a horizontal line.

Bruce Simon, Chair

And, that such amendments read:

1. Page 9.

Following: line 7

Insert: "(10) "Short-term worker" means a short-term worker as defined in 2-18-101."

Renumber: subsequent subsections

-END-

Committee Vote:
Yes 14, No 5.

1/24
ms
171307SC.Hgd

1 HOUSE BILL NO. 172

2 INTRODUCED BY SOFT

3 BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING DEFINITIONS RELATED TO PERMANENT,
6 TEMPORARY, AND SEASONAL POSITIONS; PROVIDING FOR A CATEGORY OF EMPLOYEE CALLED A
7 SHORT-TERM WORKER; DEFINING "SHORT-TERM WORKER"; CLARIFYING PROVISIONS FROM WHICH
8 CERTAIN EMPLOYEES ARE EXEMPT; ELIMINATING THE REQUIREMENT THAT THE DEPARTMENT OF
9 ADMINISTRATION ADMINISTER A STATE SICK-PAY PLAN; AMENDING SECTIONS 2-18-101, 2-18-102,
10 2-18-103, 2-18-104, 2-18-111, 2-18-304, 2-18-601, 2-18-603, 2-18-611, 2-18-618, 39-29-101, AND
11 39-30-103, MCA; REPEALING SECTION 2-18-605, MCA; AND PROVIDING AN EFFECTIVE DATE."

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE
REPRINTED. PLEASE REFER TO SECOND READING COPY
(YELLOW) FOR COMPLETE TEXT.**

APPROVED BY COM ON
BUSINESS & LABOR

HOUSE BILL NO. 172

INTRODUCED BY SOFT

BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING DEFINITIONS RELATED TO PERMANENT, TEMPORARY, AND SEASONAL POSITIONS; PROVIDING FOR A CATEGORY OF EMPLOYEE CALLED A SHORT-TERM WORKER; DEFINING "SHORT-TERM WORKER"; CLARIFYING PROVISIONS FROM WHICH CERTAIN EMPLOYEES ARE EXEMPT; ELIMINATING THE REQUIREMENT THAT THE DEPARTMENT OF ADMINISTRATION ADMINISTER A STATE SICK-PAY PLAN; AMENDING SECTIONS 2-18-101, 2-18-102, 2-18-103, 2-18-104, 2-18-111, 2-18-304, 2-18-601, 2-18-603, 2-18-611, 2-18-618, 39-29-101, AND 39-30-103, MCA; REPEALING SECTION 2-18-605, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-18-101, MCA, is amended to read:

"2-18-101. Definitions. As used in parts 1 through 3 and part 10 of this chapter, the following definitions apply:

(1) "Agency" means a department, board, commission, office, bureau, institution, or unit of state government recognized in the state budget.

(2) "Anniversary date", except as modified in part 3 of this chapter, means the month and day on which an employee began the most recent period of uninterrupted state service.

(3) "Base salary" means the amount of compensation paid to an employee, excluding:

(a) state contributions to group benefits provided in 2-18-703;

(b) overtime;

(c) fringe benefits as defined in 39-2-903; and

(d) the longevity allowance provided in 2-18-304.

(4) "Board" means the board of personnel appeals established in 2-15-1705.

(5) "Class" means one or more positions substantially similar with respect to the kind or nature of duties performed, responsibility assumed, and level of difficulty so that the same descriptive title may be used to designate each position allocated to the class, similar qualifications may be required of persons

1 appointed to the positions in the class, and the same pay rate or pay grade may be applied with equity.

2 (6) "Class series benchmark" means a representative position within a class series that is used to
3 illustrate the application of the job evaluation factors that are used to classify positions in the classification
4 plan. A benchmark description describes the duties and responsibilities assigned and the factors applied to
5 the class series benchmark.

6 (7) "Class specification" means a written descriptive statement of the duties and responsibilities
7 characteristic of a class of positions and includes the education, experience, knowledge, skills, abilities, and
8 qualifications necessary to perform the work of the class.

9 (8) "Compensation" means the annual or hourly wage or salary and includes the state contribution
10 to group benefits under the provisions of 2-18-703.

11 (9) "Department" means the department of administration created in 2-15-1001.

12 (10) Except in 2-18-306, "employee" means any state employee other than an employee excepted
13 under 2-18-103 or 2-18-104 from the statewide classification system.

14 (11) "Entry salary" means the entry-level base salary for each grade provided in 2-18-312.

15 (12) "Grade" means the number assigned to a pay range within a pay schedule in part 3 of this
16 chapter.

17 (13) "Job sharing" means the sharing by two or more persons of a position ~~that is considered an~~
18 ~~aggregate or permanent position.~~

19 (14) "Market ratio" means an employee's base salary divided by the market salary for the
20 employee's pay grade.

21 (15) "Market salary" means the midpoint in a pay grade provided in 2-18-312, based on the average
22 base salary that other employers pay to employees in comparable occupations as determined by the
23 department's salary survey of the relevant labor market.

24 (16) "Permanent position employee" means ~~a position so designated on the appropriate agency list~~
25 ~~of authorized positions referenced in 2-18-206 and approved as such in the biennium budget~~ an employee
26 who is designated by an agency as permanent and who has attained or is eligible to attain permanent
27 status.

28 (17) "Permanent status" means the state an employee attains after satisfactorily completing an
29 appropriate probationary period ~~in a permanent position.~~

30 (18) "Personal staff" means those positions occupied by employees appointed by the elected

officials enumerated in Article VI, section 1, of the Montana constitution or by the public service commission as a whole.

(19) "Position" means a collection of duties and responsibilities currently assigned or delegated by competent authority, requiring the full-time, part-time, or intermittent employment of one person.

(20) "Program" means a combination of planned efforts to provide a service.

(21) "~~Seasonal position employee~~" means a ~~position so designated on the appropriate agency list of authorized positions referenced in 2-18-206 and that is a permanent position but that is interrupted by the seasonal nature of the position~~ permanent employee who is designated by an agency as seasonal, who performs duties interrupted by the seasons, and who may be recalled without the loss of rights or benefits accrued during the preceding season.

(22) "Short-term worker" means a person who:

(a) is hired by an agency for an hourly wage established by the agency;

(b) may not work for the agency for more than 90 days in a continuous 12-month period;

(c) is not eligible for permanent status;

(d) may not be hired into another position by the agency without a competitive selection process;

and

(e) is not eligible to earn the leave and holiday benefits provided in part 6 or the group insurance benefits provided in part 7.

(23) "~~Temporary position employee~~" means a ~~position so designated on the appropriate agency list of authorized positions referenced in 2-18-206, created~~ an employee who:

(a) is designated as temporary by an agency for a definite period of time not to exceed 9 12 months;

(b) performs temporary duties or permanent duties on a temporary basis;

(c) is not eligible for permanent status;

(d) is terminated at the end of the employment period; and

(e) is not eligible to become a permanent employee without a competitive selection process."

Section 2. Section 2-18-102, MCA, is amended to read:

"2-18-102. Personnel administration -- general policy setting. (1) Except as otherwise provided by law or collective bargaining agreement, the department shall:

1 (a) encourage and exercise leadership in the development of effective personnel administration
2 within the several agencies in the state and make available the facilities of the department to this end;

3 (b) foster and develop programs for recruitment and selection of capable persons for ~~permanent,~~
4 ~~seasonal, temporary, and other types of positions~~ employment and for the improvement of employee
5 effectiveness, including training, ethical conduct, safety, health, counseling, welfare, discipline, grievances,
6 and evaluation for productivity and retention in permanent status;

7 (c) foster, develop, and promote job sharing in agencies;

8 (d) investigate from time to time the operation and effect of parts 1 and 2 of this chapter and the
9 policies made under those parts and report the findings and recommendations to the governor;

10 (e) establish policies, procedures, and forms for the maintenance of records of all employees in the
11 state service;

12 (f) apply and carry out parts 1 and 2 and the policies under those parts and perform any other
13 lawful acts that may be necessary or desirable to carry out the purposes and provisions of parts 1 and 2.

14 (2) The department may delegate authority granted to it under parts 1 and 2 to agencies in the
15 state service that effectively demonstrate the ability to carry out the provisions of parts 1 and 2, provided
16 that the agencies remain in compliance with policies, procedures, timetables, and standards established by
17 the department.

18 (3) The department shall develop and issue personnel policies for the state and shall adopt rules
19 to implement this part, except 2-18-111. Adequate public notice must be given to all interested parties of
20 proposed changes or additions to the personnel policies before the date on which they are to take effect.
21 If requested by any of the affected parties, the department shall schedule a public hearing on proposed
22 changes or additions to the personnel policies before the date on which they are to take effect.

23 (4) The department shall develop model rules of conduct for all state employees based upon the
24 provisions of Title 2, chapter 2. The department shall provide employees with a pamphlet summarizing the
25 provisions of Title 2, chapter 2. Each state agency shall adopt the model rules of conduct and additional
26 rules appropriate to the specific circumstances of the agency."

27
28 **Section 3.** Section 2-18-103, MCA, is amended to read:

29 **"2-18-103. Officers and employees excepted.** (1) Parts 1 ~~and 2~~ through 3 and 10 do not apply
30 to the following ~~positions~~ officers and employees in state government:

- 1 (a) elected officials;
- 2 (b) county assessors and their chief ~~deputy~~ deputies;
- 3 (c) employees of the office of consumer counsel;
- 4 (d) judges and employees of the judicial branch;
- 5 (e) members of boards and commissions appointed by the governor, the legislature, or other elected
- 6 state officials;
- 7 (f) officers or members of the militia;
- 8 (g) agency heads appointed by the governor;
- 9 (h) academic and professional administrative personnel with individual contracts under the authority
- 10 of the board of regents of higher education;
- 11 (i) academic and professional administrative personnel and live-in houseparents who have entered
- 12 into individual contracts with the state school for the deaf and blind under the authority of the state board
- 13 of public education;
- 14 (j) teachers under the authority of the department of corrections or the department of public health
- 15 and human services;
- 16 (k) investment officer, assistant investment officer, executive director, and three professional staff
- 17 positions of the board of investments;
- 18 (l) four professional staff positions under the board of oil and gas conservation;
- 19 (m) assistant director for security of the Montana state lottery;
- 20 (n) executive director and senior investment officer of the Montana board of science and
- 21 technology development;
- 22 (o) executive director and employees of the state compensation insurance fund;
- 23 (p) state racing stewards employed by the executive secretary of the Montana board of
- 24 horseracing;
- 25 (q) executive director of the Montana wheat and barley committee;
- 26 (r) commissioner of banking and financial institutions; and
- 27 (s) training coordinator for county attorneys.
- 28 (2) Employees of an entity of the legislative branch, other than the office of consumer counsel, are
- 29 exempt from the application of 2-18-1011 through 2-18-1013. With respect to entities of the legislative
- 30 branch, other than the office of consumer counsel:

(a) as used in parts 1 through 3 of this chapter, references to the "department of administration" or "department" apply to the legislative council established by 5-11-101, which may delegate administrative duties to the legislative services division established by 5-11-111;

(b) as used in 2-18-102, the term "governor" applies to the legislature; and

(c) as used in 2-18-204, the term "budget director" applies to the "approving authority" as defined in 17-7-102."

Section 4. Section 2-18-104, MCA, is amended to read:

"2-18-104. Exemption for personal staff -- limit. (1) Subject to the limitations in subsections (2) and (3), members of a personal staff are exempt from ~~the application of 2-18-204, 2-18-206, 2-18-207, and 2-18-1011 through 2-18-1013~~ parts 1 through 3 and 10.

(2) The personal staff who are exempted by subsection (1) may not exceed 10 unless otherwise approved by the department according to criteria developed by the department. Under no circumstances may the total exemptions of each elected official exceed 15.

(3) The number of members of the personal staff of the public service commission who are exempted by subsection (1) may not exceed 10."

Section 5. Section 2-18-111, MCA, is amended to read:

"2-18-111. Hiring preference for residents of Indian reservations for state jobs within reservation -- rules. (1) A state agency that operates within an Indian reservation shall give a preference in hiring for ~~a position of~~ employment with the state agency to an Indian resident of the reservation who has substantially equal qualifications for the position.

(2) The commissioner of labor and industry shall enforce this section, and investigate complaints of its violation, and may adopt rules to implement this section.

(3) For the purposes of this section, the following definitions apply:

(a) "Employment" means being employed as a permanent, temporary, or seasonal employee as defined in 2-18-101 for a state position. The term does not include:

(i) a state elected official;

(ii) appointment by an elected official to a body, such as a board, commission, committee, or council;

1 (iii) appointment by an elected official to a public office if the appointment is provided for by law;

2 or

3 (iv) engagement as an independent contractor or employment by an independent contractor.

4 (b) "Indian" means a person who is enrolled or who is a lineal descendant of a person enrolled upon
5 an enrollment listing of the bureau of Indian affairs or upon the enrollment listing of a recognized Indian
6 tribe, domiciled in the United States.

7 ~~(b) "Position" means a permanent, temporary, or seasonal position as defined in 2-18-101 for a~~
8 ~~state position. The term does not include:~~

9 ~~(i) a state elected office;~~

10 ~~(ii) appointment by an elected official to a body, such as a board, commission, committee, or~~
11 ~~council;~~

12 ~~(iii) appointment by an elected official to a public office if the appointment is provided for by law;~~

13 ~~or~~

14 ~~(iv) engagement as an independent contractor or employment by an independent contractor.~~

15 (c) "State agency" means a department, office, board, bureau, commission, agency, or other
16 instrumentality of the executive or judicial branches of the government of this state."
17

18 **Section 6.** Section 2-18-304, MCA, is amended to read:

19 **"2-18-304. Longevity allowance.** (1) (a) (i) Effective July 1, 1995, through the last day of the pay
20 period immediately preceding the pay period that includes October 1, 1995, in addition to the compensation
21 provided for in 2-18-303, 2-18-312, 2-18-313, 2-18-314, or 2-18-315, each employee who has completed
22 5 years of uninterrupted state service must receive 9/10 of 1% of the employee's base salary multiplied
23 by the number of completed, contiguous 5-year periods of uninterrupted state service.

24 (ii) Effective on the first day of the pay period that includes October 1, 1995, in addition to the
25 compensation provided for in 2-18-303, 2-18-312, 2-18-313, 2-18-314, or 2-18-315, each employee who
26 has completed 5 years of uninterrupted state service must receive 1.5% of the employee's base salary
27 multiplied by the number of completed, contiguous 5-year periods of uninterrupted state service.

28 (b) Service to the state is not interrupted by authorized leaves of absence.

29 (2) (a) For the purpose of determining years of service under this section, an employee must be
30 credited with 1 year of service for each period of:

(i) 2,080 hours of service following the employee's date of employment; an employee must be credited with 80 hours of service for each biweekly pay period in which the employee is in a pay status or on an authorized leave of absence without pay, regardless of the number of hours of service in the pay period; or

(ii) 12 uninterrupted calendar months following the employee's date of employment in which the employee was in a pay status or on an authorized leave of absence without pay, regardless of the number of hours of service in any month. An employee of a school at a state institution or the university system must be credited with 1 year of service if the employee is employed for an entire academic year.

(b) State agencies, other than the university system and a school at a state institution, shall use the method provided in subsection (2)(a)(i) to calculate years of service under this section.

(3) For the purposes of calculating longevity, employment as a short-term worker does not apply toward years of service."

Section 7. Section 2-18-601, MCA, is amended to read:

"2-18-601. Definitions. For the purpose of this part, except 2-18-620, the following definitions apply:

(1) "Agency" means any legally constituted department, board, or commission of state, county, or city government or any political subdivision thereof.

(2) "Break in service" means a period of time in excess of 5 working days when the person is not employed and that severs continuous employment.

(3) "Continuous employment" means working within the same jurisdiction without a break in service of more than 5 working days or without a continuous absence without pay of more than 15 working days.

(4) "Employee" means any person employed by an agency except elected state, county, and city officials, schoolteachers, and persons contracted as independent contractors or hired under personal services contracts.

(5) "Full-time employee" means an employee who normally works 40 hours a week.

(6) "Holiday" means a scheduled day off with pay to observe a legal holiday, as specified in 1-1-216 or 20-1-305, except Sundays.

(7) "Part-time employee" means an employee who normally works less than 40 hours a week.

(8) "Permanent employee" means ~~an employee who is assigned to a position designated as permanent on the appropriate list of authorized positions referenced in 2-18-206 and approved as such in the biennium budget~~ a permanent employee as defined in 2-18-101.

(9) "Seasonal employee" means ~~an employee assigned to a position designated as seasonal on the appropriate agency list of authorized positions referenced in 2-18-206 and for which the agency has a permanent need but which is interrupted by the seasonal nature of the assignment~~ a seasonal employee as defined in 2-18-101.

(10) "SHORT-TERM WORKER" MEANS A SHORT-TERM WORKER AS DEFINED IN 2-18-101.

~~(10)(11)~~ (11) "Sick leave" means a leave of absence with pay for a sickness suffered by an employee or ~~his~~ a member of the employee's immediate family or for a permanent state employee who is eligible for parental leave under the provisions of 2-18-606.

~~(11)(12)~~ (12) "Sick pay plan" means a plan that:

~~(a) provides for an agency to make payments in lieu of wages to employees on account of sickness or accident disability; and~~

~~(b) meets the requirements of 42 U.S.C. 409(b) or (d).~~

~~(12)~~ (12) "Temporary employee" means ~~an employee assigned to a position designated as temporary on the appropriate agency list of authorized positions referenced in 2-18-206, created for a definite period of time not to exceed 9 months~~ a temporary employee as defined in 2-18-101.

~~(13)(12)(13)~~ (13) "Transfer" means a change of employment from one agency to another agency in the same jurisdiction without a break in service.

~~(14)(13)(14)~~ (14) "Vacation leave" means a leave of absence with pay for the purpose of rest, relaxation, or personal business at the request of the employee and with the concurrence of the employer."

Section 8. Section 2-18-603, MCA, is amended to read:

"2-18-603. Holidays -- observance when falling on employee's day off. (1) (a) Any ~~Any~~ A full-time employee who is scheduled for a day off on a day ~~which~~ that is observed as a legal holiday, except Sundays, ~~shall be~~ is entitled to receive a day off with pay either on the day preceding the holiday or on another day following the holiday in the same pay period or as scheduled by the employee and ~~his~~ the employee's supervisor, whichever allows a day off in addition to the employee's regularly scheduled days off, provided the employee is in a pay status on ~~his~~ the employee's last regularly scheduled working day

1 immediately before the holiday or on ~~his~~ the employee's first regularly scheduled working day immediately
2 after the holiday.

3 (b) Part-time employees receive pay for the holiday on a prorated basis according to rules adopted
4 by the department of administration or appropriate administrative officer under 2-18-604.

5 (c) A short-term worker may not receive holiday pay.

6 (2) For purposes of this section, the term "employee" does not include nonteaching school district
7 employees."

8
9 **Section 9.** Section 2-18-611, MCA, is amended to read:

10 **"2-18-611. Annual vacation leave.** (1) Each permanent full-time employee shall earn annual
11 vacation leave credits from the first day of employment. Vacation leave credits earned ~~shall~~ must be
12 credited at the end of each pay period. However, employees are not entitled to any vacation leave with pay
13 until they have been continuously employed for a period of 6 calendar months.

14 (2) Seasonal employees ~~shall~~ earn vacation credits. However, ~~such persons~~ seasonal employees
15 must be employed for 6 qualifying months before they may use the vacation credits. In order to qualify,
16 ~~such seasonal~~ employees ~~must~~ shall immediately report back for work when operations resume in order to
17 avoid a break in service.

18 (3) Permanent part-time employees are entitled to prorated annual vacation benefits if they have
19 worked the qualifying period.

20 (4) An employee may not accrue annual vacation leave credits while in a leave-without-pay status.

21 (5) Temporary employees ~~do not~~ earn vacation leave credits, ~~except that a temporary employee~~
22 ~~who is subsequently hired into a permanent position within the same jurisdiction without a break in service~~
23 ~~and temporary employees who are employed continuously longer than 6 months may count as earned leave~~
24 ~~credits for the immediate term of temporary employment~~ but may not use the credits until after working
25 for 6 qualifying months.

26 (6) A short-term worker, as defined in 2-18-101, may not earn vacation leave credits, and time
27 worked as a short-term worker does not apply toward the person's rate of earning vacation leave credits."

28
29 **Section 10.** Section 2-18-618, MCA, is amended to read:

30 **"2-18-618. Sick leave.** (1) A permanent full-time employee earns sick leave credits from the first

1 day of employment. For calculating sick leave credits, 2,080 hours (52 weeks x 40 hours) equals 1 year.
2 Sick leave credits must be credited at the end of each pay period. Sick leave credits are earned at the rate
3 of 12 working days for each year of service without restriction as to the number of working days that may
4 be accumulated. Employees are not entitled to be paid sick leave until they have been continuously
5 employed 90 days.

6 (2) An employee may not accrue sick leave credits while in a leave-without-pay status.

7 (3) Permanent part-time employees are entitled to prorated leave benefits if they have worked the
8 qualifying period.

9 (4) Full-time temporary and seasonal employees are entitled to sick leave benefits provided they
10 work the qualifying period.

11 (5) A short-term worker may not earn sick leave credits.

12 (6) An employee who terminates employment with the agency is entitled to a lump-sum payment
13 equal to one-fourth of the pay attributed to the accumulated sick leave. The pay attributed to the
14 accumulated sick leave must be computed on the basis of the employee's salary or wage at the time ~~he~~
15 the employee terminates ~~his~~ employment with the state, county, or city. Accrual of sick leave credits for
16 calculating the lump-sum payment provided for in this subsection begins July 1, 1971. The payment is the
17 responsibility of the agency in which the sick leave accrues. However, an employee does not forfeit any
18 sick leave rights or benefits ~~he had~~ accrued prior to July 1, 1971. However, when an employee transfers
19 between agencies within the same jurisdiction, ~~he~~ the employee is not entitled to a lump-sum payment. In
20 a transfer between agencies, the receiving agency shall assume the liability for the accrued sick leave
21 credits earned after July 1, 1971, and transferred with the employee.

22 (6)(7) An employee who receives a lump-sum payment pursuant to this section and who is again
23 employed by any agency may not be credited with ~~any~~ sick leave for which the employee has previously
24 been compensated.

25 (7)(8) Abuse of sick leave is cause for dismissal and forfeiture of the lump-sum payments provided
26 for in this section.

27 (8)(9) An employee may contribute any portion of ~~his~~ the employee's accumulated sick leave to
28 a nonrefundable sick leave fund for state employees and becomes eligible to draw upon the fund if an
29 extensive illness or accident exhausts ~~his~~ the employee's accumulated sick leave. The department of
30 administration shall, in consultation with the state employee group benefits advisory council, provided for

1 in 2-15-1016, administer the sick leave fund and adopt rules to implement this subsection.

2 ~~(9)(10)~~ A local government may establish and administer through local rule a sick leave fund into
3 which its employees may contribute a portion of their accumulated sick leave."

4
5 **Section 11.** Section 39-29-101, MCA, is amended to read:

6 **"39-29-101. Definitions.** For the purposes of this chapter, the following definitions apply:

7 (1) "Active duty" means full-time duty with military pay and allowances in the armed forces, except
8 for training, determining physical fitness, or service in the reserve or national guard.

9 (2) "Armed forces" means the United States:

10 (a) army, navy, air force, marine corps, and coast guard; and

11 (b) merchant marine for service recognized by the United States department of defense as active
12 military service for the purpose of laws administered by the department of veterans affairs.

13 (3) "Disabled veteran" means a person:

14 (a) whether or not the person is a veteran as defined in this section, who was separated under
15 honorable conditions from active duty in the armed forces and has established the present existence of a
16 service-connected disability or is receiving compensation, disability retirement benefits, or pension because
17 of a law administered by the department of veterans affairs or a military department; or

18 (b) who has received a purple heart medal.

19 (4) "Eligible relative" means:

20 (a) the unmarried surviving spouse of a veteran or disabled veteran;

21 (b) the spouse of a disabled veteran who is unable to qualify for appointment to a position;

22 (c) the mother of a veteran who died under honorable conditions while serving in the armed forces
23 if:

24 (i) the mother's spouse is totally and permanently disabled; or

25 (ii) the mother is the widow of the father of the veteran and has not remarried;

26 (d) the mother of a service-connected permanently and totally disabled veteran if:

27 (i) the mother's spouse is totally and permanently disabled; or

28 (ii) the mother is the widow of the father of the veteran and has not remarried.

29 (5) "Position" means a position occupied by a permanent, temporary, or seasonal position employee
30 as defined in 2-18-101 for a the state position or a similar permanent, temporary, or seasonal position

1 employee with a public employer other than the state. The term does not include:

2 (a) a state or local elected office;

3 (b) appointment by an elected official to a body such as a board, commission, committee, or
4 council;

5 (c) appointment by an elected official to a public office if the appointment is provided for by law;

6 (d) a department head appointment by the governor or an executive department head appointment
7 by a mayor, city manager, county commissioner, or other chief administrative or executive officer of a local
8 government; or

9 (e) engagement as an independent contractor or employment by an independent contractor.

10 (6) "Public employer" means:

11 (a) a department, office, board, bureau, commission, agency, or other instrumentality of the
12 executive, legislative, or judicial branches of the government of this state;

13 (b) a unit of the Montana university system;

14 (c) a school district or community college; and

15 (d) a county, city, or town.

16 (7) "Scored procedure" means a written test, structured oral interview, performance test, or other
17 selection procedure or a combination of these procedures that results in a numerical score to which
18 percentage points may be added.

19 (8) "Under honorable conditions" means a discharge or separation from active duty characterized
20 by the armed forces as under honorable conditions. The term includes honorable discharges and general
21 discharges but does not include dishonorable discharges or other administrative discharges characterized
22 as other than honorable.

23 (9) "Veteran" means a person who:

24 (a) was separated under honorable conditions from active duty in the armed forces after having
25 served more than 180 consecutive days, other than for training; or

26 (b) as a member of a reserve component under an order of active duty pursuant to 10 U.S.C.
27 672(a), (d), or (g), 10 U.S.C. 673, or 10 U.S.C. 673b served on active duty during a period of war or in
28 a campaign or expedition for which a campaign badge is authorized and was discharged or released from
29 duty under honorable conditions."
30

1 **Section 12.** Section 39-30-103, MCA, is amended to read:

2 **"39-30-103. Definitions.** For the purposes of this chapter, the following definitions apply:

3 (1) "Eligible spouse" means the spouse of a handicapped person determined by the department of
4 public health and human services to have a 100% disability who is unable to use the employment
5 preference because of the person's disability.

6 (2) "Handicapped person" means an individual certified by the department of public health and
7 human services to have a physical or mental impairment that substantially limits one or more major life
8 activities, such as writing, seeing, hearing, speaking, or mobility, and that limits the individual's ability to
9 obtain, retain, or advance in employment.

10 (3) (a) "Initial hiring" means a personnel action for which applications are solicited from outside the
11 ranks of the current employees of:

12 (i) a department, as defined in 2-15-102, for a position within the executive branch;

13 (ii) a legislative agency for a position within the legislative branch;

14 (iii) a judicial agency, such as the office of supreme court administrator, office of supreme court
15 clerk, state law library, or similar office in a state district court for a position within the judicial branch;

16 (iv) a city or town for a municipal position, including a city or municipal court position; and

17 (v) a county for a county position, including a justice's court position.

18 (b) A personnel action limited to current employees of a specific public entity identified in
19 ~~subsections~~ subsection (3)(a)(i) through (3)(a)(v), current employees in a reduction-in-force pool who have
20 been laid off from a specific public entity identified in ~~subsections~~ subsection (3)(a)(i) through (3)(a)(v), or
21 current participants in a federally authorized employment program is not an initial hiring.

22 (4) (a) "Mental impairment" means:

23 (i) suffering from a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or
24 any other neurologically handicapping condition closely related to mental retardation and requiring treatment
25 similar to that required by mentally retarded individuals; or

26 (ii) an organic or mental impairment that has substantial adverse effects on an individual's cognitive
27 or volitional functions.

28 (b) The term mental impairment does not include alcoholism or drug addiction and does not include
29 any mental impairment, disease, or defect that has been asserted by the individual claiming the preference
30 as a defense to any criminal charge.

(5) "Position" means a position occupied by a permanent or seasonal position employee as defined in 2-18-101 for a the state position or a position occupied by a similar permanent or seasonal position employee with a public employer other than the state. However, the term does not include:

(a) a position occupied by a temporary position employee as defined in 2-18-101 for a the state position or a similar temporary position employee with a public employer other than the state;

(b) a state or local elected official;

(c) employment as an elected official's immediate secretary, legal advisor, court reporter, or administrative, legislative, or other immediate or first-line aide;

(d) appointment by an elected official to a body such as a board, commission, committee, or council;

(e) appointment by an elected official to a public office if the appointment is provided for by law;

(f) a department head appointment by the governor or an executive department head appointment by a mayor, city manager, county commissioner, or other chief administrative or executive officer of a local government; or

(g) engagement as an independent contractor or employment by an independent contractor.

(6) (a) "Public employer" means:

(i) any department, office, board, bureau, commission, agency, or other instrumentality of the executive, judicial, or legislative branch of the government of the state of Montana; and

(ii) any county, city, or town.

(b) The term does not include a school district, a vocational-technical program, a community college, the board of regents of higher education, the Montana university system, a special purpose district, an authority, or any political subdivision of the state other than a county, city, or town.

(7) "Substantially equal qualifications" means the qualifications of two or more persons among whom the public employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons."

NEW SECTION. Section 13. Repealer. Section 2-18-605, MCA, is repealed.

NEW SECTION. Section 14. Effective date. [This act] is effective July 1, 1997.

-END-

COMMITTEE--(S) LABOR & EMPLOYMENT RELATIONS

CHAIRMAN--TOM KEATING

SECRETARY-GILDA CLANCY/439

NORMAL SCHEDULE => SITE: ROOM 413/415

DAYS: T,TH,S

TIME: 3:00 P.M.

- BILL NO--		REFERRED	HEARING	OTHER CONSIDERATION DATES	EXECUTIVE ACTION/DATE/VOTE	-----	REREFERRED	----	DATE READ
HB0101	BERGSAGEL, ERNEST				INCREASING TO \$200,000 PROJECTS THAT MAY BE CONSTRUCTED BY INMATE LABOR				
	2/04	3/06			CONCUR AS AMENDED 3/18 VOTE: 6-3				3/20
HB0115	GRIMES, DUANE				REVISE DEDUCTIONS FROM UNEMPLOYMENT BENEFITS				
	1/21	2/04			CONCUR 2/6 VOTE: 7-0				2/08
HB0150	JOHNSON, ROYAL				DECREASE % OF OLD FUND LIABILITY TAX AND REQUIRE REPAYMENT OF \$20 MILLION				
	3/28	4/08			TABLED 4/15 VOTE: 6-2				
HB0172	SOFT, LOREN				REVISE PROVISIONS ABOUT STATE EMPLOYEES AND EMPLOYMENT PRACTICES				
	1/30	2/11			CONCUR AS AMENDED 3/6 VOTE: 6-3				3/07
HB0252	MOLNAR, BRAD				REVISE CONTRACTOR AND INDEPENDENT CONTRACTOR LAWS				
	3/03	3/13		TABLED 3/20	CONCUR AS AMENDED 3/27 VOTE: 8-1				3/28
HB0341	MERCER, JOHN				OVERTIME EXEMPTION FOR CERTAIN EMPLOYEES OF PARTS STORE				
	2/11	3/11			CONCUR 3/18 VOTE: 9-0				3/20
HB0345	MASOLO, GAY ANN				ADOPTING THE WORKFORCE DRUG AND ALCOHOL TESTING ACT				
	3/03	3/11			CONCUR AS AMENDED 3/20 VOTE: 7-2				3/22
HB0367	BEAUDRY, HALEY				REVISE EXPERIENCE REQUIREMENT FOR CONSTRUCTION BLASTER				
	2/05	3/04			CONCUR 3/6 VOTE: 9-0				3/07
HB0407	EWER, DAVID				REVISE "SERVICES" FOR PREVAILING WAGE PURPOSES				
	2/19	3/04			CONCUR 3/6 VOTE: 9-0				3/07
HB0447	STOVALL, JAY				PERMIT TEMPORARY PRIVATE SECURITY GUARDS				
	3/03	3/11			CONCUR AS AMENDED 3/18 VOTE: 9-0				3/20
HB0517	VICK, STEVE				REQUIRE EMPLOYEE PERMISSION TO DIVERT WAGES/SALARY FOR POLITICAL PURPOSES				
	3/04	3/18			CONCUR AS AMENDED 3/20 VOTE: 9-0				3/22

MINUTES

**MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By **CHAIRMAN THOMAS F. KEATING**, on February 11, 1997, at 3:05 p.m., in Room 413/415.

ROLL CALL

Members Present:

Sen. Thomas F. Keating, Chairman (R)
Sen. James H. "Jim" Burnett, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Steve Benedict (R)
Sen. C.A. Casey Emerson (R)
Sen. Dale Mahlum (R)
Sen. Debbie Bowman Shea (D)
Sen. Fred Thomas (R)
Sen. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Eddy McClure, Legislative Services Division
Gilda Clancy, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SJR 5, HB 172, SB 225; 2-5-97
Executive Action: SB 251, SB 233, SJR 5

HEARING ON SJR 5

Sponsor: SEN. GARY AKLESTAD, SD 44, Galata

Proponents: Ingrid Danielson, Department of Labor & Industry
JoAnn Erickson, Office Public Instruction
Tom Hayes, Montana Job Training Program
Mike Kahoe, Montana Job Training Program, and
Chief Executive Granite County Commission
Mike Murray, Lewis & Clark County Commissioners
Candy Wimmer, Crime Control Youth Justice Council

Opponents: None.

their programs, including single mothers and teen parents, are run through their job-training partnership.

SEN. EMERSON asked since there is a 16% reduction, does that reduce their load of 16%.

Mr. Kahoe responded that it does not because they are only serving approximately 5% of the population that is eligible. It also does not affect their federal funding.

SEN. DEBBIE SHEA asked SEN. AKLESTAD regarding the 10% participants who they would like to follow-up, is that a random selection?

SEN. AKLESTAD responded he is not sure he can answer that, but possibly they pick every tenth person.

Ingrid Danielson answered that right now they do a follow-up on all the people who terminate from their programs three months after they complete the program. They do an in-person telephone interview and they are required by law to do a statistical report of the people in each program. They haven't worked out the details of this and would like to do so before committing to that.

They would like to attempt to use data which is already collected by doing a social security number match with a participant so they would not be incurring a great cost in a labor-intensive follow-up. If possible, they would like to use information which is already collected and on the records and perform analysis on that data.

Closing by Sponsor:

SEN. AKLESTAD closed by stating the first part of the resolution is to see if they can check accountability by seeing if those people are on the job. If they are not on the job, what they can do to keep them on the job and train them so we can get these people working opposed to being in a prison system. The last part of the resolution directly relates to that. We need to begin, not only in this area, but in other areas of state government to take up the slack. This is one step in that direction.

HEARING ON HB 172

Sponsor: REP. LOREN SOFT, HD 12, Billings

Proponents: Mark Cress, Department of Administration
Jack Holstrom, Montana Association of Counties
Russ McDonald, Montana Department of
Transportation
Lance Melton, Montana School Board Association
Doug Denler, Department of Fish, Wildlife & Parks

Opponents: None.

Opening Statement by Sponsor:

REP. LOREN SOFT, HD 12, Billings, stated he is bringing this bill before the Committee at the request of the Department of Administration. This is a bill for clarifying employment practices related to permanent, temporary, and seasonal positions; providing for a category of employee called a short-term worker. For those in the private sector, it would mean we are outdating our personnel practices and procedures.

REP. SOFT said this bill is to address the issues brought forth by Human Resources advisory groups and Human Resources directors in the larger state agencies. The issues were the current statutes contain two sets of definitions, one for position and one for employee. The bill clarifies this by incorporating those two terms into the term employee and deleting the term provision.

Secondly, the current law is unclear as to the rights and benefits packages for employees who are in various employment categories, whether short-term or temporary.

Thirdly, there is a need to clarify the employment statutes for seasonal and temporary employees. Current law also allows for maximum nine months for temporary employment positions and this bill extends that to twelve months. There are projects which the state government has at different times, that run longer than nine months. They would dismiss the employee then hire them back to finish the project so this extends up to twelve months.

Lastly, there needs to be additional assurance that when temporary employees are moved into permanent positions, they cannot be hired without going through a competitive selection process. In other words, if you are a temporary employee and are looking at applying for a full-time permanent position, you need to go through a competitive application process like anyone else. This levels the playing field.

The Department had good input in the process of accomplishing the provisions considered in this bill and the Human Resources advisory group labored over these issues and developed the position paper, which was subsequently shared with the following entities: State Employer Union, Public Employers' Association, Montana Federation of State Employers and Employees, Local Government Associations, including the Montana Association of Counties, Montana League of Cities and Towns, Montana School Boards' Association and a couple of temporary employment companies, the Western Staff Services and Express Personnel Services. There was input received from these folks throughout this process and as a result, a preliminary draft of legislation was shared.

To give the committee an idea of what the sections contain, **REP. SOFT** stated in Section 1, page 2, line 24 is the change of the definition from position to employee. Page 3, line 6 through 26, clarifies the employment status for seasonal employees and short-term workers and temporary employees. Also listed with those clarifications are their respective benefits packages. On line 26 at the bottom of page 3 states that temporary employees cannot become permanent employees without going through that competitive selection process.

Section 2 states the new language of inserting employment for position so that language is consistent with the definition of Section 1.

Sections 3 and 4 are language clarification in the code and addresses "exempt employees" and makes the various sections consistent with the definitions.

Section 5, again is that language change from position to employee in hiring preferences for residents of Indian reservations.

Section 6, page 8, line 11, excludes short-term workers who work a maximum of 90 days from earning service towards longevity allowances.

Section 7, page 9, lines 8 through 17, again are definitions of seasonal and temporary employees for the purpose of sick and annual leave. This deletes the definition of a sick pay plan. This was an obsolete term which was not used in the state process.

Section 8, page 10, line 4, excludes short-term workers from receiving holiday pay.

Section 9, page 10, line 23, states that temporary employees earn vacation but cannot use credits until they have been employed six months. Line 25 excludes short-term workers from earning vacation leave credits, short-term means the 90-day worker.

Section 10, page 11, line 5, excludes short-term workers from earning sick leave credits.

Section 11, page 12, line 29 changes the language from position to employee in the Veteran Preference Act.

Section 12, page 14, line 30 is a language change from position to employee in the Disabled Persons Preference Act.

Section 13 contains some repealers of the old, outdated sick pay plan. The effective date is 7/1/97.

Proponents' Testimony:

Mark Cress, Department of Administration, said they tried to get input from as many groups as possible to incorporate the input into this legislation. This bill clarifies existing statute rather than making fundamental changes in employment status.

The most substitutive change is to move the allowable status of temporary employment from nine months to twelve months. That was requested by agencies to be more consistent with their project time on a fiscal year basis.

As **REP. SOFT** mentioned, the bill clarifies definitions so that there are one set of definitions. Currently, we have a definition of a temporary employee and a definition of temporary position. The bill creates the short-term worker status and clarifies that they cannot receive benefits. Currently, employees who work less than 90 days for a state agency do not receive most of those benefits. They would not receive longevity credit, they do accrue leave but are not eligible to use it and when they are terminated, it is forfeited. This deals with people who are hired for less than 90 days in a more efficient manner without recording benefits that they will never have an opportunity to use.

It does provide some protection so that if the employee is in a short-term category without competitive process, but before they can be moved to a long-term or permanent position, they would have to go through a competitive selection procedure. He presented on amendment (**EXHIBIT 3**) which he feels is necessary. This amends Section 3 of the bill on the bottom of page 4.

The bill accrues a list of employees and officers which are exempt from the personnel policy's classification. This included on page 5, lines 14 and 15, teachers under the authority of the Department of Corrections of Public Health and Human Services. Some time ago there was a court case which said these teachers are state employees and should be treated the same as other state employees. Under the policies, they have a pay plan in statute in Section 3. The language in the bill will exempt them from that Section 3 from that pay plan unless this amendment is adopted. The amendment takes teachers out of that list.

This bill clarifies employment definitions and makes it easier for agencies to manage temporary and short-term workers.

Jack Holstrom, Montana Association of Counties, supported HB 172. They believe there are three very important things this legislation accomplishes. First, it clarifies the definitions relating to permanent, seasonal, and temporary employees. This is extremely important for county government in that the present definitions are seasonal, temporary, and permanent as they exist in the law now. Counties do not have positions on an agency roster, so they have been basically trying to fit definitions in to utilize it in county government. By taking that language out and tying this to the definitions of seasonal, temporary and

permanent to the actual employee, it will make it much simpler and much clearer for county government.

Secondly, the creation of short-term worker is also advantageous to county government. {Tape: 1; Side: B; Approx. Time Count: 3:48 p.m.} This classification can be utilized for short-term employment such as week spraying, county fairs, voter registration, some short-term road work and things of this particular nature.

Thirdly, the expansion of the concept of temporary employees from nine months to twelve months is beneficial. Mr. Holstrom said he worked for state government for 26 years before he went to work for county governments. There were many times when managers would need an employee for longer than a nine-month period, so they would go through a sham of creating termination of this particular employee and break service for one week and then hire that employee back. This gives managers a little more latitude. Another issue particularly imperative this bill accomplishes is that it eliminates the opportunity for managers to run over the nine-month temporary employment period and create by administrative fiat, a permanent employee.

Mr. Holstrom is personally aware of situations where this has happened. The employer will forget about breaking service in nine months and then they will call the division administrator a couple of weeks after the nine month period and tell him they have another permanent employee on the roster now. This is not fair to the employing agency nor is it fair to other employees who would like to compete for those permanent positions.

Russ McDonald, Department of Transportation, appeared as a proponent to this bill. The changes to the definitions make this bill more comprehensive and make the terms easier to understand. The Department of Transportation has had experiences where projects ran beyond the nine months and they either had to terminate the employee, then rehire them. Sometimes they are not available and they would have to hire someone new and retrain them. It would certainly be a benefit to have the twelve months rather than the nine months as the length of the temporary assignment.

Another advantage of that twelve-month period is that they have a number of employees who are either injured on the job or have had some illness of some kind and they hold their jobs open for a period of time. Under the current law, that period of time is nine months. The additional three months would give them time to work with positions.

They also have need for the short-term worker. An example is a flood they had in their building last year and they had to bring three or four people in to move boxes and files, etc. in their basement. He hopes the committee will look favorably upon this bill.

Lance Melton, Montana School Boards' Association, stated comparing the comments of the other proponents, particularly those of the Association of Counties, school districts are in a similar situation of those of the counties in terms of where the definition of agency applies under 218-601. The bill saw strong support in the House and passed 65 to 35 vote on the third reading. They respectfully ask a do-concur vote from this committee.

Doug Denler, Montana Fish, Wildlife & Parks, supported HB 172. They believe it will help them properly manage work force and provide better service to the public. The short-term work provision is especially beneficial to them, especially in those types of positions which are difficult to fill, highly skilled types like computer professionals. He urged the committee's favorable consideration of this bill.

Opponents' Testimony: None.

Questions From Committee Members and Responses:

SEN. EMERSON asked **Mark Cress** in reference to part-time employees, if independent contractors were ever hired.

Mr. Cress answered the state does hire independent contractors.

SEN. EMERSON asked if some of the short-term employees are independent contractors.

Mr. Cress responded one of the areas they believe this bill might help address is the question about independent contractors who may not really be independent contractors but are employees of the state. Sometimes it is difficult.

For example, **Doug Danler** from **FWP** mentioned they need a computer programmer for a short period of time. To find somebody who will come in as a state employee to fix the computer is difficult. The person they find may not be a private business person and meet all the requirements as an independent contractor. This bill would allow the agency to bring them in a short-term basis to get the job done.

SEN. SUE BARTLETT asked **Mark Cress** if there is a possibility he might be back the next session or the one after that to make temporary workers people who work less than fifteen months instead of twelve.

Mr. Cress answered he does not believe they will be back to change this again. Some people they spoke to wanted to extend it past twelve, but some were comfortable with nine as well as the unions they spoke to. They settled on twelve months as being the perfect time period.

Closing by Sponsor:

REP. SOFT responded in the interest of time, he urges a do-concur.

HEARING ON SB 225

Sponsor: SEN. GERRY DEVLIN, SD 2, Terry

Proponents: George Kurkowski, Mayor, City of Miles City

Opponents: Tim Bergstrom, Montana State Firemens' Assoc.
REP. JOE QUILICI, HD 36, Butte
Vern Erickson, Montana State Firemens' Assoc.
(EXHIBIT 4) Sent to the Committee by Fax

Opening Statement by Sponsor:

SEN. GERRY DEVLIN, SD 2, Terry, presented SB 225. He said this is a bill which may not be tasteful to a lot of people.

In Miles City, five out of three years the disagreements have gone to an arbitrator. It is his belief that is more often than the members of the original legislation had in mind. He believes something is amiss and this could be that one or both sides are not really bargaining in the best of faith. It is also an issue which was a resolution coming out of the League of Cities and Towns and their platform. He feels this is a good time to see if everybody is coming to the table in good faith.

Proponents' Testimony:

George T. Kurkowski, Mayor of Miles City, supported SB 225.

(EXHIBIT 5 & 6)

Opponents' Testimony:

Tim Bergstrom, Montana State Firemens' Association, stated he is present in opposition to SB 225. He believes it is important to set the record straight. In all due respect to the Mayor of Miles City, there are two types of arbitration in the Montana law.

One is called issue arbitration which deals with grievances. There was a comment made by Mr. Kurkowski made in reference to a child molester in another city which has nothing to do with SB 225 or the type of arbitration contemplated in this bill.

This particular bill deals with interest arbitration exclusively. Interest arbitration is the form of arbitration that is required when firefighters and their public employers come to impasse on their terms of bargaining agreement and there is no remedy at hand for them settling the dispute. The remedy, then, is provided by a neutral third-party arbitrator. That is interest

Proposed Amendment to House Bill No. 172
Second Reading Copy

DATE 2-11-97

BILL NO. HB 172

For the Committee on Labor and Employment Relations

Prepared by the Department of Administration
February 11, 1997

1. Page 5, lines 14 and 15.
Strike: subsection (j) in its entirety
Renumber: subsequent subsections

DATE 2-11-97

SENATE COMMITTEE ON Labor

BILLS BEING HEARD TODAY: SJR5, HB172, SB225

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Tom Hayes	MJTP	SJR5	Info Only	
Mike Kahoe	" " " "	SJR5	"	"
VERN ERICKSON	MT State Fireman's Assoc	SB225		✓
George Kurkowsky	City of Miles City	SB225	✓	
Mike Murray	Lewis & Clark Co	"	✓	
LANCE MELTON	MSBA	HB172	X	
Joanne Erickson	OPI	SJR5	X	
Ingrid Danielson	Job Service Div ^{DLI}	SJR5	X	
Pat Clinch	MT State Council Fire Fighters	SB225		X
Cathy Wimmer	MT Board of Criminal Justice	SB225	X	
Tim BERGSTROM	MT. STATE FIREMEN'S ASSOCIATION	SB225		X
Russ McDONALD	MT DEPT TRANS	HB172	X	
Doug DeLuca	FISH, WILDLIFE, PARKS	HB172	X	
MARK CRESS	Dept. of Admin.	HB172	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 2-11-97

SENATE COMMITTEE ON Labor

BILLS BEING HEARD TODAY: _____

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Michael Bentley	AFSCME	HB 172		☒
Michael Bentley	AFSCME	SB 225		☒

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By **CHAIRMAN THOMAS F. KEATING**, on March 6, 1997,
at 3:12 P.M., in Room 413/415

ROLL CALL

Members Present:

Sen. Thomas F. Keating, Chairman (R)
Sen. James H. "Jim" Burnett, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Steve Benedict (R)
Sen. C.A. Casey Emerson (R)
Sen. Dale Mahlum (R)
Sen. Debbie Bowman Shea (D)
Sen. Fred Thomas (R)
Sen. Bill Wilson (D)

Members Excused: None

Members Absent: None

Staff Present: Eddye McClure, Legislative Services Division
Gilda Clancy, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 101, 3-6-97
Executive Action: HB 172, DO CONCUR AS AMENDED
HB 367, DO CONCUR
HB 407, DO CONCUR
HJR 10, DO CONCUR

HEARING ON HB 101

Sponsor: REPRESENTATIVE ERNEST BERGSAGEL, HD 95, Malta

Proponents: Bob Anderson, Department of Corrections
Ross Swanson, Department of Corrections
Tom O'Connell, Department of Administration

Opponents: Jerry Driscoll, Montana Building Trades Industry
Carl Schweitzer, Montana Contractors' Association
Don Judge, Montana State AFL/CIO

In regard to the level of taxation, **REP. BERGSAGEL** suggested that if the construction budget is approved, they will have to add another \$80 Million in operational costs by 2003 just to operate what is being proposed. The question is where is that money going to come from? We are talking about where we have lost money from taxes which might have been paid from employees, but where is the money from the taxpayer going to come from to pay for these facilities?

REP. BERGSAGEL said in the three years he has served on the Long-Range Planning Committee, they have built a lot. They have built to a point that there aren't enough contractors in the state to build the facilities that are proposed. There aren't enough laborers to do the work, so the projects are being delayed because of that. He said they are talking about a maximum potential of \$1 Million out of a \$270 Million budget proposed for this session alone. He stated this is insignificant in the scheme of things when we look at what we are doing this session. He asked the Committee to consider that when they deliberate these issues. He would like the opportunity to see any technical amendments if any are made so they can accomplish the tasks at hand. He asked for support of this bill.

{Tape: 1; Side: B; Approx. Time Count: 3:54 p.m.}

EXECUTIVE ACTION ON HB 172

Amendments: HB017208.AEM (EXHIBIT 1), HB017201.AEM (EXHIBIT 2)

Motion: SEN. BENEDICT made the motion to add amendment, (EXHIBIT 1) to HB 172.

Discussion: SEN. BARTLETT asked **Eddye McClure** to clarify why the teachers needed to be exempt in this situation.

Ms. McClure said she cannot recall the exact reason, other than it was something that should have been taken out in the re-draft of the bill. She believes that teachers in the Department of Corrections and Public Health & Human Services are covered elsewhere.

CHAIRMAN KEATING asked for suggestions from the committee. He stated they could amend the bill on the Floor after they get an explanation and then decided to take a vote on the amendment.

Vote: The motion to adopt amendment, (EXHIBIT 1), passed with a voice vote of five in favor and four opposing.

Motion: SEN. WILSON moved that amendment, (EXHIBIT 2), be added to HB 172, then asked to segregate #1 of the amendment and moved that #1 be added.

Vote: The motion failed with six opposing and three supporting by voice vote.

Discussion: SEN. BENEDICT asked SEN. WILSON if the sponsor has agreed to these amendments?

SEN. WILSON said the sponsor has not seen the amendments, they were offered to SEN. WILSON by Darrel Holzer. The first was fairly easy to understand but he and Ms. McClure have been talking about the second and he thinks it is an expansion of the definition of short-term worker.

SEN. BENEDICT said he would not feel comfortable amending REP. SOFT'S bill with something they do not know how it is going to affect it.

SEN. SHEA asked if there was any way they could come back to this issue?

SEN. WILSON withdrew the motion of that segregated section #2 of the amendment.

Motion: SEN. BENEDICT moved do-concur HB 172 as amended.

Discussion: SEN. EMERSON asked if there was a strong need for this bill?

SEN. KEATING said several of the proponents to this bill were having difficulty under current law having part-time help or short-term workers. The bill was requested by the Department of Administration to clarify the definition of short-term worker and purposes of having people work for less than 90 days as temporary workers. It helps get around the employer/employee situation with temporary help.

SEN. EMERSON said it seems to him they have been getting along okay with it. It wasn't too long ago they got caught paying Social Security and unemployment so he wonders what is going on with this. He didn't know if this was ever clear.

Vote: The motion DO CONCUR HB 172 AS AMENDED passed by voice vote with six in favor of and three opposing votes.

EXECUTIVE ACTION ON HB 367

Amendments: None.

Motion: SEN. SHEA moved do concur.

Discussion: None.

Vote: The motion DO CONCUR HB 367 passed unanimously by voice vote.

Amendments to House Bill No. 172
Third Reading Copy

SENATE
ENCL. NO. 1
DATE 3-6-97
BILL NO. HB 172

Requested by Representative Soft
For the Senate Committee on Labor and Employment Relations

Prepared by Eddye McClure
March 5, 1997

1. Title, line 8.

Following: "EXEMPT;"

Insert: "REMOVING THE EXEMPT STATUS OF TEACHERS UNDER THE
AUTHORITY OF THE DEPARTMENTS OF CORRECTIONS AND PUBLIC
HEALTH AND HUMAN SERVICES;"

2. Page 5, lines 14 and 15.

Strike: subsection (j) in its entirety

Renumber: subsequent subsections

Amendments to House Bill No. 172
Third Reading Copy

Requested by Senator Wilson
For the Senate Committee on Labor and Employment Relations

Prepared by Eddy McClure
February 11, 1997

1. Page 3, line 12.

Following: "wage"

Strike: "established by the agency"

Insert: "that is equal to the normal rate established for the
function for which the person is hired"

2. Page 3, line 16.

Strike: "and"

Insert: "(e) is terminated after the worker has accumulated 90
work days within a continuous 12-month period; and"

Renumber: subsequent subsection

**MONTANA SENATE
1997 LEGISLATURE
LABOR AND EMPLOYMENT RELATIONS COMMITTEE**

DATE 3-6-97

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SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 7, 1997

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration House Bill 172 (third reading copy -- blue), respectfully report that House Bill 172 be amended as follows and as so amended be concurred in.

Signed: 
Senator Thomas F. Keating, Chair

That such amendments read:

1. Title, line 8.

Following: "EXEMPT;"

Insert: "REMOVING THE EXEMPT STATUS OF TEACHERS UNDER THE AUTHORITY OF THE DEPARTMENTS OF CORRECTIONS AND PUBLIC HEALTH AND HUMAN SERVICES;"

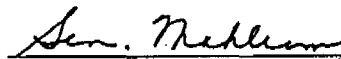
2. Page 5, lines 14 and 15.

Strike: subsection (j) in its entirety

Renumber: subsequent subsections

-END-

 Amd. Coord.
Sec. of Senate


Senator Carrying Bill

501008SC.STS

HOUSE BILL NO. 172

INTRODUCED BY SOFT

BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING DEFINITIONS RELATED TO PERMANENT, TEMPORARY, AND SEASONAL POSITIONS; PROVIDING FOR A CATEGORY OF EMPLOYEE CALLED A SHORT-TERM WORKER; DEFINING "SHORT-TERM WORKER"; CLARIFYING PROVISIONS FROM WHICH CERTAIN EMPLOYEES ARE EXEMPT; REMOVING THE EXEMPT STATUS OF TEACHERS UNDER THE AUTHORITY OF THE DEPARTMENTS OF CORRECTIONS AND PUBLIC HEALTH AND HUMAN SERVICES; ELIMINATING THE REQUIREMENT THAT THE DEPARTMENT OF ADMINISTRATION ADMINISTER A STATE SICK-PAY PLAN; AMENDING SECTIONS 2-18-101, 2-18-102, 2-18-103, 2-18-104, 2-18-111, 2-18-304, 2-18-601, 2-18-603, 2-18-611, 2-18-618, 39-29-101, AND 39-30-103, MCA; REPEALING SECTION 2-18-605, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-18-101, MCA, is amended to read:

"2-18-101. Definitions. As used in parts 1 through 3 and part 10 of this chapter, the following definitions apply:

(1) "Agency" means a department, board, commission, office, bureau, institution, or unit of state government recognized in the state budget.

(2) "Anniversary date", except as modified in part 3 of this chapter, means the month and day on which an employee began the most recent period of uninterrupted state service.

(3) "Base salary" means the amount of compensation paid to an employee, excluding:

(a) state contributions to group benefits provided in 2-18-703;

(b) overtime;

(c) fringe benefits as defined in 39-2-903; and

(d) the longevity allowance provided in 2-18-304.

(4) "Board" means the board of personnel appeals established in 2-15-1705.

(5) "Class" means one or more positions substantially similar with respect to the kind or nature of

1 duties performed, responsibility assumed, and level of difficulty so that the same descriptive title may be
2 used to designate each position allocated to the class, similar qualifications may be required of persons
3 appointed to the positions in the class, and the same pay rate or pay grade may be applied with equity.

4 (6) "Class series benchmark" means a representative position within a class series that is used to
5 illustrate the application of the job evaluation factors that are used to classify positions in the classification
6 plan. A benchmark description describes the duties and responsibilities assigned and the factors applied to
7 the class series benchmark.

8 (7) "Class specification" means a written descriptive statement of the duties and responsibilities
9 characteristic of a class of positions and includes the education, experience, knowledge, skills, abilities, and
10 qualifications necessary to perform the work of the class.

11 (8) "Compensation" means the annual or hourly wage or salary and includes the state contribution
12 to group benefits under the provisions of 2-18-703.

13 (9) "Department" means the department of administration created in 2-15-1001.

14 (10) Except in 2-18-306, "employee" means any state employee other than an employee excepted
15 under 2-18-103 or 2-18-104 from the statewide classification system.

16 (11) "Entry salary" means the entry-level base salary for each grade provided in 2-18-312.

17 (12) "Grade" means the number assigned to a pay range within a pay schedule in part 3 of this
18 chapter.

19 (13) "Job sharing" means the sharing by two or more persons of a position ~~that is considered an~~
20 ~~aggregate or permanent position.~~

21 (14) "Market ratio" means an employee's base salary divided by the market salary for the
22 employee's pay grade.

23 (15) "Market salary" means the midpoint in a pay grade provided in 2-18-312, based on the average
24 base salary that other employers pay to employees in comparable occupations as determined by the
25 department's salary survey of the relevant labor market.

26 (16) "Permanent ~~position~~ employee" means ~~a position so designated on the appropriate agency list~~
27 ~~of authorized positions referenced in 2-18-206 and approved as such in the biennium budget~~ an employee
28 who is designated by an agency as permanent and who has attained or is eligible to attain permanent
29 status.

30 (17) "Permanent status" means the state an employee attains after satisfactorily completing an

appropriate probationary period ~~in a permanent position.~~

(18) "Personal staff" means those positions occupied by employees appointed by the elected officials enumerated in Article VI, section 1, of the Montana constitution or by the public service commission as a whole.

(19) "Position" means a collection of duties and responsibilities currently assigned or delegated by competent authority, requiring the full-time, part-time, or intermittent employment of one person.

(20) "Program" means a combination of planned efforts to provide a service.

(21) "~~Seasonal position employee~~" means ~~a position so designated on the appropriate agency list of authorized positions referenced in 2-18-206 and that is a permanent position but that is interrupted by the seasonal nature of the position~~ permanent employee who is designated by an agency as seasonal, who performs duties interrupted by the seasons, and who may be recalled without the loss of rights or benefits accrued during the preceding season.

(22) "Short-term worker" means a person who:

(a) is hired by an agency for an hourly wage established by the agency;

(b) may not work for the agency for more than 90 days in a continuous 12-month period;

(c) is not eligible for permanent status;

(d) may not be hired into another position by the agency without a competitive selection process;

and

(e) is not eligible to earn the leave and holiday benefits provided in part 6 or the group insurance benefits provided in part 7.

(23) "~~Temporary position employee~~" means ~~a position so designated on the appropriate agency list of authorized positions referenced in 2-18-206, created an employee who:~~

(a) is designated as temporary by an agency for a definite period of time not to exceed 9 12 months;

(b) performs temporary duties or permanent duties on a temporary basis;

(c) is not eligible for permanent status;

(d) is terminated at the end of the employment period; and

(e) is not eligible to become a permanent employee without a competitive selection process."

Section 2. Section 2-18-102, MCA, is amended to read:

1 **"2-18-102. Personnel administration -- general policy setting.** (1) Except as otherwise provided
2 by law or collective bargaining agreement, the department shall:

3 (a) encourage and exercise leadership in the development of effective personnel administration
4 within the several agencies in the state and make available the facilities of the department to this end;

5 (b) foster and develop programs for recruitment and selection of capable persons for ~~permanent~~
6 ~~seasonal, temporary, and other types of positions~~ employment and for the improvement of employee
7 effectiveness, including training, ethical conduct, safety, health, counseling, welfare, discipline, grievances
8 and evaluation for productivity and retention in permanent status;

9 (c) foster, develop, and promote job sharing in agencies;

10 (d) investigate from time to time the operation and effect of parts 1 and 2 of this chapter and the
11 policies made under those parts and report the findings and recommendations to the governor;

12 (e) establish policies, procedures, and forms for the maintenance of records of all employees in the
13 state service;

14 (f) apply and carry out parts 1 and 2 and the policies under those parts and perform any other
15 lawful acts that may be necessary or desirable to carry out the purposes and provisions of parts 1 and 2.

16 (2) The department may delegate authority granted to it under parts 1 and 2 to agencies in the
17 state service that effectively demonstrate the ability to carry out the provisions of parts 1 and 2, provided
18 that the agencies remain in compliance with policies, procedures, timetables, and standards established by
19 the department.

20 (3) The department shall develop and issue personnel policies for the state and shall adopt rules
21 to implement this part, except 2-18-111. Adequate public notice must be given to all interested parties of
22 proposed changes or additions to the personnel policies before the date on which they are to take effect.
23 If requested by any of the affected parties, the department shall schedule a public hearing on proposed
24 changes or additions to the personnel policies before the date on which they are to take effect.

25 (4) The department shall develop model rules of conduct for all state employees based upon the
26 provisions of Title 2, chapter 2. The department shall provide employees with a pamphlet summarizing the
27 provisions of Title 2, chapter 2. Each state agency shall adopt the model rules of conduct and additional
28 rules appropriate to the specific circumstances of the agency."

29
30 **Section 3.** Section 2-18-103, MCA, is amended to read:

"2-18-103. Officers and employees excepted. (1) Parts 1 ~~and 2~~ through 3 and 10 do not apply to the following ~~positions~~ officers and employees in state government:

- (a) elected officials;
- (b) county assessors and their chief ~~deputy~~ deputies;
- (c) employees of the office of consumer counsel;
- (d) judges and employees of the judicial branch;
- (e) members of boards and commissions appointed by the governor, the legislature, or other elected state officials;
- (f) officers or members of the militia;
- (g) agency heads appointed by the governor;
- (h) academic and professional administrative personnel with individual contracts under the authority of the board of regents of higher education;
- (i) academic and professional administrative personnel and live-in houseparents who have entered into individual contracts with the state school for the deaf and blind under the authority of the state board of public education;
- ~~(j) teachers under the authority of the department of corrections or the department of public health and human services;~~
- ~~(k)(J)~~ investment officer, assistant investment officer, executive director, and three professional staff positions of the board of investments;
- ~~(k)(K)~~ four professional staff positions under the board of oil and gas conservation;
- ~~(m)(L)~~ assistant director for security of the Montana state lottery;
- ~~(n)(M)~~ executive director and senior investment officer of the Montana board of science and technology development;
- ~~(o)(N)~~ executive director and employees of the state compensation insurance fund;
- ~~(p)(O)~~ state racing stewards employed by the executive secretary of the Montana board of horseracing;
- ~~(q)(P)~~ executive director of the Montana wheat and barley committee;
- ~~(r)(Q)~~ commissioner of banking and financial institutions; and
- ~~(s)(R)~~ training coordinator for county attorneys.

(2) Employees of an entity of the legislative branch, other than the office of consumer counsel, are

1 exempt from the application of 2-18-1011 through 2-18-1013. With respect to entities of the legislative
2 branch, other than the office of consumer counsel:

3 (a) as used in parts 1 through 3 of this chapter, references to the "department of administration"
4 or "department" apply to the legislative council established by 5-11-101, which may delegate administrative
5 duties to the legislative services division established by 5-11-111;

6 (b) as used in 2-18-102, the term "governor" applies to the legislature; and

7 (c) as used in 2-18-204, the term "budget director" applies to the "approving authority" as defined
8 in 17-7-102."

9
10 **Section 4.** Section 2-18-104, MCA, is amended to read:

11 **"2-18-104. Exemption for personal staff -- limit.** (1) Subject to the limitations in subsections (2)
12 and (3), members of a personal staff are exempt from ~~the application of 2-18-204, 2-18-205, 2-18-206,~~
13 ~~and 2-18-1011 through 2-18-1013~~ parts 1 through 3 and 10.

14 (2) The personal staff who are exempted by subsection (1) may not exceed 10 unless otherwise
15 approved by the department according to criteria developed by the department. Under no circumstances
16 may the total exemptions of each elected official exceed 15.

17 (3) The number of members of the personal staff of the public service commission who are
18 exempted by subsection (1) may not exceed 10."

19
20 **Section 5.** Section 2-18-111, MCA, is amended to read:

21 **"2-18-111. Hiring preference for residents of Indian reservations for state jobs within reservation**
22 **-- rules.** (1) A state agency that operates within an Indian reservation shall give a preference in hiring for
23 ~~a position of~~ employment with the state agency to an Indian resident of the reservation who has
24 substantially equal qualifications for the position.

25 (2) The commissioner of labor and industry shall enforce this section, and investigate complaints
26 of its violation, and may adopt rules to implement this section.

27 (3) For the purposes of this section, the following definitions apply:

28 (a) "Employment" means being employed as a permanent, temporary, or seasonal employee as
29 defined in 2-18-101 for a state position. The term does not include:

30 (i) a state elected official;

(ii) appointment by an elected official to a body, such as a board, commission, committee, or council;

(iii) appointment by an elected official to a public office if the appointment is provided for by law;

or

(iv) engagement as an independent contractor or employment by an independent contractor.

(b) "Indian" means a person who is enrolled or who is a lineal descendant of a person enrolled upon an enrollment listing of the bureau of Indian affairs or upon the enrollment listing of a recognized Indian tribe, domiciled in the United States.

~~(b) "Position" means a permanent, temporary, or seasonal position as defined in 2-18-101 for a state position. The term does not include:~~

~~(i) a state elected office;~~

~~(ii) appointment by an elected official to a body, such as a board, commission, committee, or council;~~

~~(iii) appointment by an elected official to a public office if the appointment is provided for by law;~~

or

~~(iv) engagement as an independent contractor or employment by an independent contractor.~~

(c) "State agency" means a department, office, board, bureau, commission, agency, or other instrumentality of the executive or judicial branches of the government of this state."

Section 6. Section 2-18-304, MCA, is amended to read:

"2-18-304. Longevity allowance. (1) (a) (i) Effective July 1, 1995, through the last day of the pay period immediately preceding the pay period that includes October 1, 1995, in addition to the compensation provided for in 2-18-303, 2-18-312, 2-18-313, 2-18-314, or 2-18-315, each employee who has completed 5 years of uninterrupted state service must receive 9/10 of 1% of the employee's base salary multiplied by the number of completed, contiguous 5-year periods of uninterrupted state service.

(ii) Effective on the first day of the pay period that includes October 1, 1995, in addition to the compensation provided for in 2-18-303, 2-18-312, 2-18-313, 2-18-314, or 2-18-315, each employee who has completed 5 years of uninterrupted state service must receive 1.5% of the employee's base salary multiplied by the number of completed, contiguous 5-year periods of uninterrupted state service.

(b) Service to the state is not interrupted by authorized leaves of absence.

1 (2) (a) For the purpose of determining years of service under this section, an employee must be
2 credited with 1 year of service for each period of:

3 (i) 2,080 hours of service following the employee's date of employment; an employee must be
4 credited with 80 hours of service for each biweekly pay period in which the employee is in a pay status or
5 on an authorized leave of absence without pay, regardless of the number of hours of service in the pay
6 period; or

7 (ii) 12 uninterrupted calendar months following the employee's date of employment in which the
8 employee was in a pay status or on an authorized leave of absence without pay, regardless of the number
9 of hours of service in any month. An employee of a school at a state institution or the university system
10 must be credited with 1 year of service if the employee is employed for an entire academic year.

11 (b) State agencies, other than the university system and a school at a state institution, shall use
12 the method provided in subsection (2)(a)(i) to calculate years of service under this section.

13 (3) For the purposes of calculating longevity, employment as a short-term worker does not apply
14 toward years of service."

15
16 **Section 7.** Section 2-18-601, MCA, is amended to read:

17 **"2-18-601. Definitions.** For the purpose of this part, except 2-18-620, the following definitions
18 apply:

19 (1) "Agency" means any legally constituted department, board, or commission of state, county
20 or city government or any political subdivision thereof.

21 (2) "Break in service" means a period of time in excess of 5 working days when the person is not
22 employed and that severs continuous employment.

23 (3) "Continuous employment" means working within the same jurisdiction without a break in
24 service of more than 5 working days or without a continuous absence without pay of more than 15 working
25 days.

26 (4) "Employee" means any person employed by an agency except elected state, county, and city
27 officials, schoolteachers, and persons contracted as independent contractors or hired under personal
28 services contracts.

29 (5) "Full-time employee" means an employee who normally works 40 hours a week.

30 (6) "Holiday" means a scheduled day off with pay to observe a legal holiday, as specified in

1-1-216 or 20-1-305, except Sundays.

(7) "Part-time employee" means an employee who normally works less than 40 hours a week.

(8) "Permanent employee" means ~~an employee who is assigned to a position designated as permanent on the appropriate list of authorized positions referenced in 2-18-206 and approved as such in the biennium budget~~ a permanent employee as defined in 2-18-101.

(9) "Seasonal employee" means ~~an employee assigned to a position designated as seasonal on the appropriate agency list of authorized positions referenced in 2-18-206 and for which the agency has a permanent need but which is interrupted by the seasonal nature of the assignment~~ a seasonal employee as defined in 2-18-101.

(10) "SHORT-TERM WORKER" MEANS A SHORT-TERM WORKER AS DEFINED IN 2-18-101.

~~(10)(11)~~ (11) "Sick leave" means a leave of absence with pay for a sickness suffered by an employee or ~~his~~ a member of the employee's immediate family or for a permanent state employee who is eligible for parental leave under the provisions of 2-18-606.

~~(11)(12)~~ (12) "Sick pay plan" means a plan that:

~~(a) provides for an agency to make payments in lieu of wages to employees on account of sickness or accident disability; and~~

~~(b) meets the requirements of 42 U.S.C. 409(b) or (d).~~

~~(12)~~ (12) "Temporary employee" means ~~an employee assigned to a position designated as temporary on the appropriate agency list of authorized positions referenced in 2-18-206, created for a definite period of time not to exceed 9 months~~ a temporary employee as defined in 2-18-101.

~~(13)(12)(13)~~ (13) "Transfer" means a change of employment from one agency to another agency in the same jurisdiction without a break in service.

~~(14)(13)(14)~~ (14) "Vacation leave" means a leave of absence with pay for the purpose of rest, relaxation, or personal business at the request of the employee and with the concurrence of the employer."

Section 8. Section 2-18-603, MCA, is amended to read:

"2-18-603. Holidays -- observance when falling on employee's day off. (1) (a) Any A full-time employee who is scheduled for a day off on a day ~~which~~ that is observed as a legal holiday, except Sundays, ~~shall be~~ is entitled to receive a day off with pay either on the day preceding the holiday or on another day following the holiday in the same pay period or as scheduled by the employee and ~~his~~ the

1 employee's supervisor, whichever allows a day off in addition to the employee's regularly scheduled days
2 off, provided the employee is in a pay status on ~~his~~ the employee's last regularly scheduled working day
3 immediately before the holiday or on ~~his~~ the employee's first regularly scheduled working day immediately
4 after the holiday.

5 (b) Part-time employees receive pay for the holiday on a prorated basis according to rules adopted
6 by the department of administration or appropriate administrative officer under 2-18-604.

7 (c) A short-term worker may not receive holiday pay.

8 (2) For purposes of this section, the term "employee" does not include nonteaching school district
9 employees."

10
11 **Section 9.** Section 2-18-611, MCA, is amended to read:

12 **"2-18-611. Annual vacation leave.** (1) Each permanent full-time employee shall earn annual
13 vacation leave credits from the first day of employment. Vacation leave credits earned ~~shall~~ must be
14 credited at the end of each pay period. However, employees are not entitled to any vacation leave with pay
15 until they have been continuously employed for a period of 6 calendar months.

16 (2) Seasonal employees ~~shall~~ earn vacation credits. However, ~~such persons~~ seasonal employees
17 must be employed for 6 qualifying months before they may use the vacation credits. In order to qualify,
18 ~~such seasonal~~ employees ~~must~~ shall immediately report back for work when operations resume in order to
19 avoid a break in service.

20 (3) Permanent part-time employees are entitled to prorated annual vacation benefits if they have
21 worked the qualifying period.

22 (4) An employee may not accrue annual vacation leave credits while in a leave-without-pay status.

23 (5) Temporary employees ~~do not~~ earn vacation leave credits, ~~except that a temporary employee~~
24 ~~who is subsequently hired into a permanent position within the same jurisdiction without a break in service~~
25 ~~and temporary employees who are employed continuously longer than 6 months may count as earned leave~~
26 ~~credits for the immediate term of temporary employment~~ but may not use the credits until after working
27 for 6 qualifying months.

28 (6) A short-term worker, as defined in 2-18-101, may not earn vacation leave credits, and time
29 worked as a short-term worker does not apply toward the person's rate of earning vacation leave credits.

1 **Section 10.** Section 2-18-618, MCA, is amended to read:

2 **"2-18-618. Sick leave.** (1) A permanent full-time employee earns sick leave credits from the first
3 day of employment. For calculating sick leave credits, 2,080 hours (52 weeks x 40 hours) equals 1 year.
4 Sick leave credits must be credited at the end of each pay period. Sick leave credits are earned at the rate
5 of 12 working days for each year of service without restriction as to the number of working days that may
6 be accumulated. Employees are not entitled to be paid sick leave until they have been continuously
7 employed 90 days.

8 (2) An employee may not accrue sick leave credits while in a leave-without-pay status.

9 (3) Permanent part-time employees are entitled to prorated leave benefits if they have worked the
10 qualifying period.

11 (4) Full-time temporary and seasonal employees are entitled to sick leave benefits provided they
12 work the qualifying period.

13 (5) A short-term worker may not earn sick leave credits.

14 (6) An employee who terminates employment with the agency is entitled to a lump-sum payment
15 equal to one-fourth of the pay attributed to the accumulated sick leave. The pay attributed to the
16 accumulated sick leave must be computed on the basis of the employee's salary or wage at the time ~~he~~
17 the employee terminates ~~his~~ employment with the state, county, or city. Accrual of sick leave credits for
18 calculating the lump-sum payment provided for in this subsection begins July 1, 1971. The payment is the
19 responsibility of the agency in which the sick leave accrues. However, an employee does not forfeit any
20 sick leave rights or benefits ~~he had~~ accrued prior to July 1, 1971. However, when an employee transfers
21 between agencies within the same jurisdiction, ~~he~~ the employee is not entitled to a lump-sum payment. In
22 a transfer between agencies, the receiving agency shall assume the liability for the accrued sick leave
23 credits earned after July 1, 1971, and transferred with the employee.

24 ~~(6)(7)~~ (7) An employee who receives a lump-sum payment pursuant to this section and who is again
25 employed by any agency may not be credited with ~~any~~ sick leave for which the employee has previously
26 been compensated.

27 ~~(7)(8)~~ (8) Abuse of sick leave is cause for dismissal and forfeiture of the lump-sum payments provided
28 for in this section.

29 ~~(8)(9)~~ (9) An employee may contribute any portion of ~~his~~ the employee's accumulated sick leave to
30 a nonrefundable sick leave fund for state employees and becomes eligible to draw upon the fund if an

1 extensive illness or accident exhausts ~~his~~ the employee's accumulated sick leave. The department of
2 administration shall, in consultation with the state employee group benefits advisory council, provided for
3 in 2-15-1016, administer the sick leave fund and adopt rules to implement this subsection.

4 ~~(9)(10)~~ A local government may establish and administer through local rule a sick leave fund into
5 which its employees may contribute a portion of their accumulated sick leave."

6
7 **Section 11.** Section 39-29-101, MCA, is amended to read:

8 **"39-29-101. Definitions.** For the purposes of this chapter, the following definitions apply:

9 (1) "Active duty" means full-time duty with military pay and allowances in the armed forces, except
10 for training, determining physical fitness, or service in the reserve or national guard.

11 (2) "Armed forces" means the United States:

12 (a) army, navy, air force, marine corps, and coast guard; and

13 (b) merchant marine for service recognized by the United States department of defense as active
14 military service for the purpose of laws administered by the department of veterans affairs.

15 (3) "Disabled veteran" means a person:

16 (a) whether or not the person is a veteran as defined in this section, who was separated under
17 honorable conditions from active duty in the armed forces and has established the present existence of a
18 service-connected disability or is receiving compensation, disability retirement benefits, or pension because
19 of a law administered by the department of veterans affairs or a military department; or

20 (b) who has received a purple heart medal.

21 (4) "Eligible relative" means:

22 (a) the unmarried surviving spouse of a veteran or disabled veteran;

23 (b) the spouse of a disabled veteran who is unable to qualify for appointment to a position;

24 (c) the mother of a veteran who died under honorable conditions while serving in the armed forces

25 if:

26 (i) the mother's spouse is totally and permanently disabled; or

27 (ii) the mother is the widow of the father of the veteran and has not remarried;

28 (d) the mother of a service-connected permanently and totally disabled veteran if:

29 (i) the mother's spouse is totally and permanently disabled; or

30 (ii) the mother is the widow of the father of the veteran and has not remarried.

(5) "Position" means a position occupied by a permanent, temporary, or seasonal position employee as defined in 2-18-101 for a the state position or a similar permanent, temporary, or seasonal position employee with a public employer other than the state. The term does not include:

(a) a state or local elected office;

(b) appointment by an elected official to a body such as a board, commission, committee, or council;

(c) appointment by an elected official to a public office if the appointment is provided for by law;

(d) a department head appointment by the governor or an executive department head appointment by a mayor, city manager, county commissioner, or other chief administrative or executive officer of a local government; or

(e) engagement as an independent contractor or employment by an independent contractor.

(6) "Public employer" means:

(a) a department, office, board, bureau, commission, agency, or other instrumentality of the executive, legislative, or judicial branches of the government of this state;

(b) a unit of the Montana university system;

(c) a school district or community college; and

(d) a county, city, or town.

(7) "Scored procedure" means a written test, structured oral interview, performance test, or other selection procedure or a combination of these procedures that results in a numerical score to which percentage points may be added.

(8) "Under honorable conditions" means a discharge or separation from active duty characterized by the armed forces as under honorable conditions. The term includes honorable discharges and general discharges but does not include dishonorable discharges or other administrative discharges characterized as other than honorable.

(9) "Veteran" means a person who:

(a) was separated under honorable conditions from active duty in the armed forces after having served more than 180 consecutive days, other than for training; or

(b) as a member of a reserve component under an order of active duty pursuant to 10 U.S.C. 672(a), (d), or (g), 10 U.S.C. 673, or 10 U.S.C. 673b served on active duty during a period of war or in a campaign or expedition for which a campaign badge is authorized and was discharged or released from

duty under honorable conditions."

Section 12. Section 39-30-103, MCA, is amended to read:

"39-30-103. Definitions. For the purposes of this chapter, the following definitions apply:

(1) "Eligible spouse" means the spouse of a handicapped person determined by the department of public health and human services to have a 100% disability who is unable to use the employment preference because of the person's disability.

(2) "Handicapped person" means an individual certified by the department of public health and human services to have a physical or mental impairment that substantially limits one or more major life activities, such as writing, seeing, hearing, speaking, or mobility, and that limits the individual's ability to obtain, retain, or advance in employment.

(3) (a) "Initial hiring" means a personnel action for which applications are solicited from outside the ranks of the current employees of:

- (i) a department, as defined in 2-15-102, for a position within the executive branch;
- (ii) a legislative agency for a position within the legislative branch;
- (iii) a judicial agency, such as the office of supreme court administrator, office of supreme court clerk, state law library, or similar office in a state district court for a position within the judicial branch;
- (iv) a city or town for a municipal position, including a city or municipal court position; and
- (v) a county for a county position, including a justice's court position.

(b) A personnel action limited to current employees of a specific public entity identified in ~~subsections~~ subsection (3)(a)(i) through (3)(a)(v), current employees in a reduction-in-force pool who have been laid off from a specific public entity identified in ~~subsections~~ subsection (3)(a)(i) through (3)(a)(v), or current participants in a federally authorized employment program is not an initial hiring.

(4) (a) "Mental impairment" means:

- (i) suffering from a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other neurologically handicapping condition closely related to mental retardation and requiring treatment similar to that required by mentally retarded individuals; or
- (ii) an organic or mental impairment that has substantial adverse effects on an individual's cognitive or volitional functions.

(b) The term mental impairment does not include alcoholism or drug addiction and does not include

any mental impairment, disease, or defect that has been asserted by the individual claiming the preference as a defense to any criminal charge.

(5) "Position" means a position occupied by a permanent or seasonal position employee as defined in 2-18-101 for a the state position or a position occupied by a similar permanent or seasonal position employee with a public employer other than the state. However, the term does not include:

(a) a position occupied by a temporary position employee as defined in 2-18-101 for a the state position or a similar temporary position employee with a public employer other than the state;

(b) a state or local elected official;

(c) employment as an elected official's immediate secretary, legal advisor, court reporter, or administrative, legislative, or other immediate or first-line aide;

(d) appointment by an elected official to a body such as a board, commission, committee, or council;

(e) appointment by an elected official to a public office if the appointment is provided for by law;

(f) a department head appointment by the governor or an executive department head appointment by a mayor, city manager, county commissioner, or other chief administrative or executive officer of a local government; or

(g) engagement as an independent contractor or employment by an independent contractor.

(6) (a) "Public employer" means:

(i) any department, office, board, bureau, commission, agency, or other instrumentality of the executive, judicial, or legislative branch of the government of the state of Montana; and

(ii) any county, city, or town.

(b) The term does not include a school district, a vocational-technical program, a community college, the board of regents of higher education, the Montana university system, a special purpose district, an authority, or any political subdivision of the state other than a county, city, or town.

(7) "Substantially equal qualifications" means the qualifications of two or more persons among whom the public employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons."

NEW SECTION. Section 13. Repealer. Section 2-18-605, MCA, is repealed.

1 NEW SECTION. **Section 14. Effective date.** [This act] is effective July 1, 1997.

2 -END-